

EXHIBIT 2

55576-017

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----- x
ANNE BRYANT,

Plaintiff,

- against -

BROADCAST MUSIC, INC., et al.,

Defendants.
----- x

ANNE BRYANT,

Plaintiff,

- against -

SUNBOW PRODUCTIONS, INC.,

Defendant.
----- x

Rockland County Courthouse
One South Main Street
New City, New York 10956
January 2, 2003
9:30 a.m.

B e f o r e:

HONORABLE ANDREW P. O'ROURKE,

Supreme Court Justice.

Appearances:

MONAGHAN, MONAGHAN, et al., ESQS.
Attorneys for Plaintiff
25 East Salem Street
Hackensack, New Jersey 07601
BY: PATRICK J. MONAGHAN, ESQ.

(Appearances continue)

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2

DUANE MORRIS, ESQS.
Attorneys for Defendant McCall
380 Lexington Avenue, 32nd Fl.
New York, New York 10168
BY: DAVID S. TANNENBAUM, ESQ.
of counsel.

5

6

PATTERSON, BELKNAP, et al., ESQS.
Attorneys for Defendant Sunbow
1133 Avenue of the Americas
New York, New York 10036
BY: STEVEN ZALESIN, ESQ.
of counsel.

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Daniela Fahey
Senior Court Reporter

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COURT CLERK: Counsels' appearance.

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MR. MONAGHAN: Good morning, your Honor.

14

Patrick Monaghan for plaintiff in both matters.

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MR. TANNENBAUM: Good morning, your Honor.

16

David Tannenbaum and Adrienne Valencia for the

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defendant Joel McCall on the first matter on the

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calendar.

19

MR. ZALESIN: Steven Zalesin for defendant

20

Sunbow Productions in the second matter.

21

THE COURT: Second matter, Sunbold?

22

MR. ZALESIN: B-o-w, Sunbow.

23

THE COURT: They were listed in the first

24

matter but weren't served. Is that correct?

25

MR. MONAGHAN: They were served, but we

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2 did not take a default in a timely fashion under
3 the one-year provision in the CPLR.

4 MR. ZALESIN: We believe we are not
5 served.

6 THE COURT: One way or another you were
7 named.

8 MR. ZALESIN: Named but without notice;
9 without service or without actual notice. We
10 had no idea that this case existed until several
11 months after we were served with the complaint
12 in our case in mid 2002. It was only
13 essentially by happenstance that we learned
14 there was a second action pending in this Court
15 before your Honor in which -- which is, I
16 gather, on the trial-ready calendar.

17 THE COURT: Yes, but it seems to be based
18 on the same factors and has the same parties
19 involved, so it's hard for me to understand why
20 we shouldn't consolidated it. Admittedly this
21 is late.

22 MR. TANNENBAUM: If I may, your Honor, I
23 understood you wrote the letter for the
24 defendant Bryant, and we didn't know about the
25 action for Sunbow until their papers arrived a

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2 few weeks before. We didn't know there were two
3 cases. Otherwise we would have most likely made
4 an application to consolidate the two cases
5 because its makes sense. It's the same case.

6 THE COURT: Let me ask you this. You're
7 all here this morning. Any chance of getting
8 this resolved?

9 MR. TANNENBAUM: We tried this a couple of
10 months ago when we were before this calendar.
11 We don't think there is a basis for the case.

12 THE COURT: I got a cattle prod for a
13 Christmas present.

14 MR. TANNENBAUM: That would be good. When
15 you brought the plaintiff in, we didn't get a
16 counter offer. If you want to use it on the
17 plaintiff, I'm all for it.

18 THE COURT: How about us having a short
19 chat? I'm going to consolidate this.

20 MR. ZALESIN: If I can be heard briefly on
21 that subject.

22 THE COURT: Yes.

23 MR. ZALESIN: We certainly understand that
24 the allegation in the two cases are similar, and
25 as we understand it, defendant Sunbow is a

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2 corporation that was controlled by Mr.
3 Tannenbaum's client. Mr. McCall was a principal
4 at some point in time. He isn't at this point
5 in time but was at some time in the past, so
6 there's certainly some substantial overlap
7 between the two cases. We acknowledge that.

8 The problem that we have, your Honor, is
9 that we are in vastly different procedural
10 postures as between the two cases. We are
11 literally just getting started. We're going to
12 serve a motion to dismiss the complaint that is
13 due today on statute of limitation grounds and
14 some pleading issues, but we have had no
15 discovery really, not even time for adequate
16 factual investigation, and, Judge, it's a little
17 bit like being asked to take a final exam before
18 you've taken the class. We understand we would
19 expect the Court would grant us some time for
20 discovery, but in cases like these, where
21 there's been full discovery in the other case,
22 and the first case is ready for trial, and the
23 second case issue isn't even joined -- we
24 haven't even answered the complaint yet. It
25 would be either highly prejudicial to us to

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2 consolidate, or I guess the only alternative is
3 to allow for a substantial delay of the first
4 case in order for us to get up to speed and take
5 discovery and make whatever motions.

6 THE COURT: Let me ask you this. Have you
7 seen the discovery that's already been had?

8 MR. ZALESIN: No. We know nothing about
9 this case.

10 MR. TANNENBAUM: I know you have
11 deposition transcripts, and there were only two
12 depositions taken, and I know you have those
13 because I spoke to somebody from your office.

14 THE COURT: Let me say it seems to me that
15 if I gave you a discovery schedule today, that
16 you should certainly be able to be through with
17 discovery in 90 days.

18 MR. ZALESIN: I don't know whether that's
19 reasonable or not, your Honor.

20 THE COURT: I've been accused of being
21 unreasonable before.

22 MR. ZALESIN: I would expect that the
23 plaintiff can supply us with whatever discovery
24 we require within a reasonable period of time.
25 That's within their control. My concern,

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2 however, is that there are other parties that
3 have important factual knowledge.

4 The case, as I understand it, that Mr.
5 Monaghan originally brought and is named as BMI,
6 Broadcast Music, Inc., it's a performing rights
7 society which basically controls the copyright
8 warranties for copyright musical works. We
9 absolutely need discovery from BMI in order to
10 litigate this case because the allegation is
11 that my client, in some conspiracy along with
12 Mr. Tannenbaum's client, and others who aren't
13 before you, arranged to have the plaintiff's
14 copyrighted musical compositions reregistered
15 with BMI so monies that would be paid to the
16 plaintiff would be paid to others.

17 THE COURT: I'm sort of aware of this
18 because of the first case.

19 MR. ZALESIN: Bear with me because again
20 we haven't participated in any of the Court
21 hearings or conferences, and I don't know how
22 much your Honor is familiar with or not, but we
23 absolutely need discovery from BMI in order to
24 litigate this case. We don't know in any of
25 this is true. We haven't seen a shred of

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2 evidence that any of this is true or certainly
3 that my client Sunbow had anything to do with
4 it, if it did happen, but we absolutely need
5 discovery from third parties.

6 THE COURT: Your request for discovery
7 seems to lie its worth here in intention in
8 making a motion for summary judgment.

9 MR. ZALESIN: Your Honor, it would seem to
10 me, based on the amount of information available
11 to us at the moment, that this should be a
12 summary judgment case. I don't know what's
13 happened in this case, but we have seen no
14 evidence, not a shred of documentary evidence,
15 that anything that's alleged in the complaint
16 ever occurred, and it would seem to me that in a
17 case that's trial ready, there ought to be some
18 evidence. Otherwise it ought to be dismissed on
19 summary judgment.

20 I don't know what the record looks like in
21 the first case. We certainly would intend to
22 develop a factual record, and if it supports it,
23 make a summary judgment motion, and we would, of
24 course, request the opportunity to proceed on a
25 normal procedural track, not in any way impeded

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2 or prejudiced by the fact that there's another
3 case, which I understand is years ahead of us on
4 the calendar, and your Honor would like to move
5 forward to trial, but we are, like any other
6 litigant, entitled to our full rights as a
7 defendant and would like to pursue them.

8 THE COURT: Okay. This is what we're
9 going to do. Number one is the plaintiff will
10 withdraw the note of issue subject to
11 stipulation putting it back on, and I will tell
12 you now that if you don't sign the stipulation,
13 I'll just deliver it back on, so let's do it the
14 easy way.

15 Secondly, in the second action I'll give
16 you the normal time I have give for discovery,
17 which is 40 days for discovery of documents,
18 which would take you to about February 12th.
19 Examination before trial a month after that.
20 I'll make it March 19th. EBTs that are
21 scheduled will be held on March 19th, and --
22 where is the plaintiff's office?

23 MR. MONAGHAN: We have one in midtown. We
24 can take it at their offices if they like.

25 THE COURT: You'll either agree to

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2 someplace or take it across the street at
3 Rockland & Orange.

4 MR. MONAGHAN: That's not a problem, your
5 Honor.

6 THE COURT: I will order it for Rockland &
7 Orange -- you can take it at another place -- 10
8 a.m., and to continue from day to day until
9 completed. That starts on March 19th of this
10 year.

11 And then I'll give you a return date back
12 here.

13 COURT CLERK: April 11, 9:30 a.m.

14 MR. MONAGHAN: Your Honor, if I may, is
15 that party discovery? Because we have these
16 third parties we have to subpoena and work out
17 schedules with them.

18 THE COURT: I don't know how many people
19 you're planning on calling, but I'm going to
20 assume that you can get this done before you
21 come back here in April. You've got to get
22 moving on this case. Everybody has to get
23 moving, and actually when you come right down to
24 it, you have six months under the rules to
25 finish all discovery, and I'm not going to rush

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2 you, but on the other hand I've consolidated the
3 action. I think it is in judicial economy not
4 to try the same facts twice.

5 Okay. So that's it. Meantime I'm going
6 to order the plaintiff to make available, if due
7 the defendant Sunbow, all of the outstanding
8 discovery that has been had in this case up
9 until now. You may certainly charge for copies,
10 as required or as allowed, but that should be
11 done within the next 10 days I would say.

12 MR. MONAGHAN: That's fine, your Honor.

13 THE COURT: And you can decide for Sunbow
14 what additional discovery you need, any of the
15 parties that are involved in this case, since
16 it's now consolidated.

17 Anything else I can do for you all this
18 morning? I've done enough, you think?

19 MR. ZALESIN: No. This is reasonable,
20 your Honor. Thank you.

21 COURT CLERK: Is this consolidated for
22 purposes of joint discovery or consolidated
23 under one index number, 5092?

24 THE COURT: I think it should be
25 consolidated for all purposes, the first one.

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COURT CLERK: Do you want to prepare some form of stipulation, long form caption, indicating the matter is being consolidated under Index 5192/2000, and the Judge will so order it when you submit it.

THE COURT: You might want to get a copy of the record we just made so you'll know what's going on. As a matter of fact, I'll direct it, and the parties to share the cost.

MR. MONAGHAN: Very well. Thank you, Judge.

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I do hereby certify that the foregoing is a true and accurate transcript of the within proceedings.



Daniela Fahey

EXHIBIT 3

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND : CIVIL TERM

-----x
ANNE BRYANT,

Plaintiff,

Index No.
5192/2000

-against-

BROADCAST MUSIC, INC, (a/k/a "BMI"),
CLIFFORD A. "FORD" KINDER, KINDER & CO.,
LTD., VADIVOX, LTD., JULES M. "JOE"
BACAL, GRIFFIN BACAL, INC., STARWILD
MUSIC BMI, WILDSTAR MUSIC ASCAP, SUNBOW
PRODUCTIONS, INC. and JOHN AND JANE DOES
- 10,

Defendants.

-----x
ANNE BRYANT,

Plaintiff,

Index No.
2821/2002

-against-

SUNBOW PRODUCTIONS, INC.,

Defendant.

-----x
NON-JURY TRIAL

Rockland Supreme Court
One South Main Street
Suite 200
New City, New York 10956
July 6, 2004

B E F O R E:

HON. ANDREW P. O'ROURKE
JUSTICE OF THE SUPREME COURT

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1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 MONAGHAN, MONAGHAN, LAMB & MARCHISIO, ESQS.

4 150 West 55th Street

5 New York, New York 10019

6 BY: PATRICK J. MONAGHAN, JR., ESQ.

7 -and-

8 JEFFREY C. PRIMIANO, ESQ.

9 FOR THE DEFENDANT, BACAL:

10 DUANE MORRIS, LLP.

11 380 Lexington Avenue

12 New York, New York 10168

13 BY: DAVID S. TANNENBAUM, ESQ.

14 -and-

15 ADRIENNE L. VALENCIA, ESQ.

16 FOR THE DEFENDANT, SUNBOW:

17 PATTERSON, BELKNAP, WEBB & TYLER, LLP.

18 1133 Avenue of the Americas

19 New York, New York 10036-6710

20 BY: GLORIA C. PHARES, ESQ.

21 -and-

22 LAUREN HAMMER BRESLOW, ESQ.

23 FOR THE DEFENDANT, BMI, INC.:

24 JUDITH M. SAFFER, ESQ.

25 BMI, INC.

320 West 57th Street

New York, New York 10019-3790

Assistant General Counsel

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1 APPEARANCES: (Continued)

2
3
4 ALSO PRESENT: ANNE BRYANT, PLAINTIFF
JULES M. "JOE" BACAL, DEFENDANT
NEIL RIGBY

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9 ROBERT FRITZ
SENIOR COURT CLERK

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11
12
13 ELIZABETH A. KENT
SENIOR COURT REPORTER

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2 (Convened: 11:10 a.m.)

3 (Trial convenes on the record, in open court

4 - counsel and parties present)

5 THE COURT: Okay, at the end of this session

6 I would like all the attorneys to -- you've got to
7 keep together. I want to know who you represent.
8 Pass it along, let everybody sign it. It looks
9 like the whole bar association is here.

10 As I said to you, I'm going to take opening
11 statements.

12 MS. SAFFER: Your Honor, if it please the
13 Court, when you asked for appearances, I did not
14 stand because I'm not going to be participating.
15 But, on reflection, I thought you should be aware
16 of the fact my name is Judith Saffer, I'm the
17 attorney for Broadcast Music, Inc., the first
18 listed Defendant.

19 You stayed the case against Broadcast Music
20 and ordered the Plaintiff to begin in arbitration
21 four years ago. An arbitration proceeding has not
22 been commenced, and I am here because I'm
23 obviously concerned about the outcome of the case
24 and, also, because a witness from BMI Broadcast
25 Music, Inc. has been subpoenaed and will be here

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2 to testify.

3 THE COURT: What happened to the
4 arbitration?

5 MS. SAFFER: It was not commenced.

6 MR. MONAGHAN: The arbitration has been on
7 hold pending litigation, your Honor. BMI is the
8 Performing Rights Society, as your Honor knows.

9 THE COURT: Yeah.

10 MR. MONAGHAN: And Miss Bryant is a member
11 of that. You do not have, in arbitration, the
12 same kinds of discovery and the rights that you
13 would have in litigation to get documents and
14 whatever. Our thought was to pursue the --

15 Your Honor, this is Miss Bryant, the
16 Plaintiff in this case --

17 MS. BRYANT: How do you do?

18 MR. MONAGHAN: -- and see how the litigation
19 turns out before we pursue it. We couldn't go on
20 both fronts at the same time. It was simply too
21 much.

22 MS. SAFFER: Your Honor, although the
23 proceeding has been stayed we have produced all
24 the records that have been requested by any of the
25 parties in this, and I am finding myself, frankly,

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in a slightly difficult position in that the rulings on -- in this matter, of course, will affect BMI greatly, and yet I'm not really a participant because it was stayed and because they didn't commence an arbitration. So --

THE COURT: Do you want to be a participant?

MS. SAFFER: I would like to be allowed the opportunity, if need be, to ask a question or whatever. But --

THE COURT: I think you have to be either in or out.

MS. SAFFER: In or out?

Well, then, frankly, I'm going to stay out for the following reasons: Since I did not participate up until this point, I didn't take discovery, we were the subject of discovery, my client did give depositions. But we, on the other hand, did not have a role. And I think it might be prejudicial to us to jump in at the very last second. So we will remain on the sidelines and trust in the wisdom of your proceedings.

THE COURT: All right. Okay, I heard before that there was some initial motions of some sort that the people wanted to make? Or statements?

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to Miss Bryant. That's their case. It's a very simple case. If your Honor will have Miss Bryant identify finally the songs, the musical compositions, that she claims were re-registered at a certain date and how Mr. Bacal benefitted from their re-registration and that somehow she suffered a detriment by that, I'll go through those songs one by one --

THE COURT: I thought this was in limine?

MR. TANNENBAUM: They've listed 26 witnesses in this case, your Honor, and there appears to be an effort on their part to also put in evidence that money that went to other people or other theories of damages, such as she had to sell her house, she stopped doing business because of this. It is going to take months and months to try the case they want to try.

Very simply, what we want to do is limit the case to the case that is in the pleadings, the only cause of action in evidence. If she's got evidence that -- of money that went back because of an alleged re-registration. That is the case.

Also, to be fair, in the amended pleading there are some unconnected claims about DVD sales

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MR. TANNENBAUM: Yeah, that's correct, your Honor. There are certain motions in limine that we want to make, and I believe --

MS. PHARES: As does counsel for Sunbow Productions.

MR. TANNENBAUM: -- and I believe Mr. Monaghan has some issues -- I'm David Tannenbaum. I represent Joe Bacal. That is Mr. Bacal over here.

If your Honor wants, I'll go first.

THE COURT: We usually say ladies first, but I'll let you go first.

Go ahead.

MR. TANNENBAUM: Thanks.

Your Honor, today the Plaintiff has done a masterful job in making the Court believe that this is a complex case. It's not a complex case. It is a very simple case. They have only one cause of action left in the case. Your Honor dismissed everything else. There is a cause of action for unjust enrichment.

What their claim is, is that somehow Mr. Bacal received certain payments that he shouldn't have received and those payments should have gone

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and CD sales. We'll deal with that separately. But we would like to limit the case to the issues that are pled. Your Honor carved out four days for this trial. I don't see how we will do 26 witnesses just on the Plaintiff's case in four days.

What I would like to hand up is to simply have the Court exclude certain irrelevant testimony about money that allegedly went other places or other kinds of types of damages that she suffered and just try the case that is pled. And I'm confident that as soon as she identifies the songs, within an hour I'll be able to show your Honor the claims are nonsense. We'll be able to go home and this will end. I cannot continue to have this man suffer these attorney's fees, huge fees on a case that I will be able to show you when she identifies the songs is complete nonsense.

THE COURT: Sort of like Name That Tune.

MR. TANNENBAUM: No, your Honor, it is really not. We have all the evidence, we just want to be able to show it to you quickly.

THE COURT: I don't know that's an official

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in limine motion. If you have one I would be glad to look at it.

Would the Plaintiff like to address that?

MR. MONAGHAN: Sure.

That was not an accurate characterization of where we are at in this case. And I'm sure your Honor knows full well having dealt with a slew of motions which articulated not only the points that Mr. Tannenbaum just made, but even others which he made on behalf of Mr. Bacal.

The case is not just the eleven odd thousand dollars that Mr. Bacal has said that he received by way of performance royalties through BMI. The record is going to show, the evidence will show that he reaped huge amounts of money from the exploitation of Miss Bryant's music. This was done through licensing agreements which were all over the world, which are still being done. Even new deals are being made as we speak through Sunbow Productions.

Now, granted, he is no longer involved, but during the period that he was millions of dollars over the week -- I guess it's the last two weeks -- we've gotten documents showing that Mr.

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Bacal's company, Sunbow, just in a limited period of time, '93 through '98 -- this is the first time we're getting this stuff. Why we are getting it now when we've asked for it for years, over the weekend -- we were inundated with documents -- showed that they received over \$23 million over this period of time.

So not to spend time on the opening statement now, but Mr. Bacal is being sued because he not only received monies to which he wasn't entitled, okay, he was instrumental through his companies in altering registrations.

THE COURT: I take it counsel is saying that unjust enrichment is the last count left, which is my understanding; do you agree to that?

MR. MONAGHAN: No, I don't. I think constructive trust is also left in the case.

MR. TANNENBAUM: Based on the unjust enrichment?

MR. MONAGHAN: Right.

Those two things are in the case.

THE COURT: The second thing is he says your proof has to be limited to direct dealings by his client that would have caused this unjust

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enrichment. I would assume you agree with that too?

MR. MONAGHAN: No, I don't agree with that, your Honor. If we are able to show through the proofs that Mr. Bacal received monies either directly or indirectly through his companies, through the various companies, Sunbow, Wildstar, Starwild, if he received a financial benefit and we can show and I believe we will show that a portion of those license fees represents Miss Bryant's music.

THE COURT: All right, I think we are way off here. I'll reserve on your motion.

Let's go ahead and -- is there anything else?

MS. PHARES: Your Honor, may I please be heard?

THE COURT: Yes.

MS. PHARES: I'm going to confine myself just to the procedural part of this case that we are now discussing and, in particular, I agree with Mr. Tannenbaum that we are all prepared to go forward with the case that was pled. Part of what Mr. Monaghan has just referred to with all these

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licensing claims are the parts of this case that have never been pled that he first raised in response to our motion for summary judgment last November. Among the motions that we are making this morning and I have available is the one open legal issue which I want to discuss as well as motions in limine with respect to copyright claims that are likely to be raised with respect to wrongfully subpoenaed documents and with respect to documents that are hearsay or otherwise objectionable and on evidentiary grounds.

Mr. Monaghan is complaining about late produced documents. These are documents on a claim that has never been pled in this case. They -- most of the documents that were produced to him recently are not documents that were requested. Indeed, in a state of total irony, he has finished his recent letter to the Court saying that he is complaining that there has never been discovery. And, indeed, that is the position that we have been taking for sometime. In fact, I sent you a letter on June 10th asking for your intervention, because on the contractual claim, which is not in the complaint, Mr. Monaghan is

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attempting -- and which most of his 26 witnesses relate to, there has been no complaint, no answer, and no discovery. And, whereas, we are all prepared to try the case that has been pled we think that there will be reversible error if the Court goes forward with that part of the case without accommodating the Defendants in this case who are proper complaint.

Indeed, frankly, I will also ask to reserve any proper opening on this case until the beginning of the Defendant's case because, candidly, I do not know which case Mr. Monaghan is intending to put on.

THE COURT: Let me see if we can come to that conclusion. Mr. Monaghan, tell me, are you not bound by the four corners of the pleadings?

MR. MONAGHAN: And your rulings, your Honor. You've addressed these very issues a number of times. They've made this claim that there was never any pleading or claim in any of the pleadings for these royalties from the sales of DVDs and CDs. Your Honor's ruling has already addressed that, addressed the fact that the pleadings did cover that. We are notice pleading

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jurisdiction. They have had fair notice of the claims. They know exactly what the case is all about as a result of four or five perhaps even more summary judgment motions. They've buried us with paper. And even as recently as this weekend, July 4th, we are getting a couple of hundred pages of documents in PDF formats, license agreements, that we've asked for.

If you notice, Miss Phares used most in her statement a moment ago. Most she said were not requested. Well some were and we're still getting production. But we are prepared to try the case as it stands right now with the pleadings and your Honor's ruling.

THE COURT: Go ahead.

MS. PHARES: Your Honor, the note of issue in this case was filed last June and discovery closed last June. The first time Mr. Monaghan raised this contractual oral working agreement was in November. There has never been discovery on the contractual issues in this case, and the fact that he happened to have asked for certain documents relating to license agreements were irrelevant to the original case, and he's now

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trying to rely upon that.

I would also like to add that, whereas, I said most were not called for, the rest of them were simply formal production -- formal production of documents that were attached to our motion for summary judgment. In his letter to your Honor he claimed that we had produced 13 documents on July 4th. In fact it was one document of 13 pages, which was yet another one of the for work-for-hire agreements which Sunbow continually used. So there has been a lot of stir and drum of the misbehavior of the Defendants.

But the fact of the matter is we have never had a proper complaint and proper discovery on the part of the case that Mr. Monaghan is intending to produce his 26 witnesses.

MR. TANNENBAUM: All of this is the reason why it makes sense to try the issue of re-registrations right up front, your Honor. It's the core of her complaint. And we will show you very quickly it is nonsense. All this other stuff about indirectly you've gotten paid, over here indirectly, and somehow owns or controls this company when he wasn't even the controlling -- he

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didn't have controlling voter shares in the company. It will all fall like a house of cards one by one and your Honor will no longer continue to believe something happened to this woman. Make her say which compositions, what went wrong. We'll take you through them and we'll see in ten minutes. Otherwise, we will be here for months on indirect and documents. We're getting killed here. That's the case she pled. Let's try that case.

I agree, the words CDs and DVDs are in the complaint. What they didn't point out are payments for CDs that have nothing to do with payments that come from BMI. They are not public performance royalties. What they've done is mixed in all these theories, royalties here, royalties there, to make your Honor believe that somehow things are being hidden, making a claim some monies are coming.

Make her try the case on public performance royalties. You'll see it right away, and that's what is in the pleadings. That's what her pleading says. That's what we should try. We have no reason about the other stuff. We should

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2 try the --

3 MS. PHARES: Your Honor, one further thing I
4 wanted to ask or say is that the other real
5 problem that we have in the absence of a complaint
6 is that in the -- in the pleadings that have gone
7 on since November Mr. Monaghan has moved his case
8 backwards and forwards from copyright to contract
9 depending on which court he has been in. We are
10 entitled to know really what the form of his
11 complaint is.

12 The contents of one of our motions in limine
13 is the fact what he is trying to do is to
14 stipulate the jurisdiction of this Court. He
15 cannot do that. He is trying to say that there is
16 an oral working relationship between the parties
17 and at the same time say that the Plaintiff has
18 given exclusive rights of her works to Sunbow.
19 That is an impossibility under the Copyright Act.
20 Either there is a contractual relationship, a
21 written contractual relationship which the
22 Copyright Act would recognize and over which this
23 Court would have jurisdiction, or there is not a
24 written agreement. And if there is not a written
25 agreement then she's the copyright owner and what

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2 she is really claiming is a copyright claim which
3 is pre-empted. But we are really not in a
4 position to make our defense because we don't
5 really know what today or tomorrow or in the days
6 to come Mr. Monaghan is going to make his case
7 into.

8 THE COURT: Well, why don't we start out do
9 the openings, see if we can shed some light on it.

10 MR. TANNENBAUM: Can I make one more point,
11 your Honor?

12 Your Honor ordered them to go forthwith with
13 arbitration with BMI on February 27th 2001.
14 Happens to be my birthday. Had they done that,
15 had they done that what your Honor ordered them to
16 do, instead of trying to use this case and somehow
17 get discovery for the other case, which is what he
18 just said, had they done that they would have seen
19 from the BMI people at the arbitration how
20 nonsensical these claims of re-registration are.
21 They're going to put Miss Bryant on to testify
22 what the internal BMI document said. Had they
23 done it, Judge, I wouldn't be on -- July 4th
24 wouldn't have been wasted.

25 THE COURT: Mr. Monaghan, do you agree, this

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2 is a matter of re-registration?

3 MR. MONAGHAN: No, your Honor, it is much
4 more than that. If I can make my opening?

5 THE COURT: All right, let's go to the
6 opening.

7 MS. PHARES: Your Honor, may I submit the
8 memoranda that were due this morning?

9 THE COURT: Yes, certainly.

10 MS. PHARES: Thank you.

11 MR. MONAGHAN: We have not seen any of this
12 material.

13 MS. PHARES: It is being served as Mr. Fritz
14 asked us to do in court today.

15 MS. SAFFER: Your Honor, if I may, before
16 Mr. Monaghan begins, it is becoming clear to me as
17 I'm just listening to these discussions that the
18 actions of BMI are going to be critical to the
19 outcome of this case. And that, therefore, with
20 your forgiveness or mercy or whatever, I would
21 like to indicate that I believe it would be
22 appropriate that I participate.

23 If BMI's actions are going to be ruled upon
24 and decisions are going to be made it seems to me
25 they should be represented by counsel and I'm

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2 prepared to do that.

3 THE COURT: Well, since the arbitration was
4 never gone forward with, I don't think the
5 Plaintiff can have any disagreement with that.

6 MR. MONAGHAN: I have a huge disagreement
7 with it, your Honor, for this reason:

8 This action does not seek any relief against
9 BMI. It seeks no relief. If they wanted to
10 participate in the action they didn't have to move
11 to stay it and seek arbitration.

12 THE COURT: Why didn't you arbitrate it
13 then?

14 MR. MONAGHAN: Because we were involved in
15 this litigation.

16 MR. TANNENBAUM: Three years?

17 MR. MONAGHAN: The issue with -- the issue
18 with BMI is a very different issue. BMI is
19 theoretically a union or a Performing Rights
20 Society. We are not prepared at this point to lay
21 any great fault at the feet of BMI. We want to
22 see what comes out of this litigation. BMI, we
23 think, didn't follow its own procedures. We think
24 that they re-registered things without the proper
25 documentation. But, at this point, the real

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culprits, I think, are before this Court. We are not seeking any relief against BMI.

I'm very surprised that Miss Saffer, with whom I've dealt over the years, is here saying, oh, all of a sudden we want to participate. Procedurally, it is irregular. If they wanted to be in the case, they've known about it, they've monitored the case for four years.

THE COURT: I find, Mr. Monaghan, the fact that you had the ability to arbitrate this for all this time and never did it I'm going to allow BMI to participate in this action. We'll see what happens.

MR. MONAGHAN: That's fine.

THE COURT: Let's get along here. If you can find a chair, sit down.

MS. SAFFER: Thank you very much.

THE COURT: All right, let's go to the opening.

MR. MONAGHAN: Sure, Judge.

Your Honor, what is your pleasure in terms of time on this?

THE COURT: Well, generally in non-juries, 30 minutes.

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MR. MONAGHAN: Good morning, Judge. I'm Pat Monaghan and my associate Jeff Primiano is here on behalf of the Plaintiff, Anne Bryant.

This is an action for unjust enrichment and constructive trust. There are basically two types of damages involved in the case: One is the performance royalties which is where BMI comes in. BMI is a Performing Rights Society. Miss Bryant, the Plaintiff, is a member of BMI and has been for many years. The one thing about BMI is that according to its own rules and procedures it must pay the writer directly and the publisher. So that it's quite different with respect to other monies that may be realized from the compositions at issue. This is the one instance, public performances, live performances, broadcast performances, where the writer and publisher get their money directly. BMI monitors the performances and pays the writers according to the percentages attributable to each of the participants. So that is one type of damages that we are talking about.

But the other type of damages that we are talking about, which is way more significant, is

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the monies that are attributable to the music composed by Miss Bryant which is in various intellectual properties. Videos, DVDs, CDs, which is a huge market, even now, growing market. You can go to Amazon.com and you will see Transformers, the JEM Show, all of these products are being sold, and they have Miss Bryant's music on it. But Miss Bryant doesn't get a farthing, not a penny, for the use of her music.

So, let me put the issue right out there.

There is no writing in this case where she relinquished her writer's interest. And the record will show that the writers, and Miss Bryant in particular, zealously guard their writer's share of royalties. They don't give that up willy-nilly. It is usually a rare case where a writer will actually forego and give up the writer's share of royalties. It is even considered gauche or not industry practice for the publisher who exploits these musical compositions to seek to get the writer's royalties.

So this case is actually going to be shown to be consistent with the way the industry practice works.

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We have an expert who is going to come in here who is the former president of Capitol Records. Harvard educated. We won't hold that against him. But he will testify as to industry practice about writers and publishers.

Now, as of 2001 we've had limited information, piecemeal discovery. Those performance royalties, the BMI monies which we say Miss Bryant was shorted on are over \$238,000. Now, how do we do that? How do we calculate that? It actually took Miss Bryant -- she charted this to go back over all the royalty statements. Not only her own royalty statements, but those that Mr. Bacal -- from what we could glean from Mr. Bacal -- Starwild and Wildstar, the two publishing entities, and put that information together. She charted it, and she can show well they got money. When the writer gets money the publisher should get money.

There is a 200 percent interest in every composition with BMI. 100 percent for the writer, 100 percent for the publisher. You will see the BMI catalog which, by the way, BMI was less than what shall I say forthcoming for Miss Bryant to

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obtain that catalog which she asked for for years. It took my involvement. So after two years of begging to get a copy of her catalog, only when the lawyers got involved she finally got a catalog, which showed how they were allocating the percentages. That's performance royalties, 238,000.

Now, the other monies we're talking about in the case are monies for the exploitation of the music with other intellectual properties. We are not saying that every dime that Sunbow got or Mr. Bacal got is to be split with Miss Bryant. That would be piggish, and we're not pigs. We are here to get what we think is a fair shake. But some portion, some percentage of that intellectual property is represented by her music. In other words, the Transformers theme, which is even now a ring tone on telephones, that is a very recognizable theme. Your kids may know it, my kids know it, and it is readily identifiable. Some portion of that intellectual property in the Transformers -- and we have the CDs -- is represented by her music for which she is not paid. These ring tones, these other uses of her

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music, they all are compensable.

We've come up with a formula, a damages formula, because we've had to sort of cobble together information. For example, we only have sales figures, unit sales figures for '99 through 2003, okay, so we can only say, well, what we call mechanical royalties, mechanical -- the term "mechanical" is a term that derives from the old Copyright Act, but it basically means any iteration of the music in some form. Used to be in records. Actually it used to mean player piano rolls is where it actually comes from.

But we are going to urge upon you that mechanicals, and we think we have the authority for that, includes any CDs, DVDs, anything that has their music in it. There is a royalty for the use of such music in that -- in those iterations. There is a statutory royalty rate.

Now, the Defendants are going to jump up and down and say, oh, my, Monaghan is trying a copyright case again. They tried to take us down to Foley Square with Judge Owen arguing we have a copyright case here. Judge, this is a red herring, and I'll tell you why it is a red

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herring. Because where the copyright resides has no direct bearing on whether she is entitled to her writer royalties. Writers often turn the copyright over to the publisher or the exploiter, and they say, here, you can go with the copyright but you still have to pay me my writer royalties. Unless she signed off, and there are agreements that can do that, unless she signed off and said I'm giving up my writer's royalties I'm just working for hire. And that is going to be a term you hear, "work-for-hire", which is in the classic sense, the United States Supreme Court has already identified what "work-for-hire" is and what the criteria is. It is nothing new. It is the old classic agency.

If you are an employee -- let's say, you are an employee of Capitol Records and you write a song while you are working for Capitol Records, and you get a 1099 or a W-2 income -- not 1099. W-2. And you've written that for hire because you -- okay, your employer might own all the rights. That's not the case here. By all the criteria that has been set forth in the case law you will find that Miss Bryant did not write these

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works as works-for-hire. Okay. They were written while she was an outside independent contractor working at various -- in this case most of the compositions were written between 1983 and 1989 when she was at a company called Kinder-Bryant, her music jingles.

So the two types of damages we are talking about here are the performance royalties, over \$238,000.

And, by the way, the fact that Mr. Bacal only got 11,000 directly, according to that, doesn't mean that his company by using the music, by taking the music from the musical piggy-bank, by going in and saying, oh, here is Anne Bryant's music, let's put together a T.V. production and we'll just use that music, by doing it that way, Judge, they are able to file what are known as Q-Sheets with BMI.

BMI uses two types of documents to accomplish the registration on its records: One is called a clearance form which is the usual -- if the writer writes a song and there is a BMI writer they fill out a document called a clearance form. Identifies the song, BMI assigns it a

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1 OPENING - PLAINTIFF/MONAGHAN

2 number, goes in the catalog, and the writer
3 indicates participation in the song.

4 The other way that BMI accomplishes
5 registrations is through the vehicle of a cue
6 sheet. Cue sheets are only used in productions,
7 T.V. productions, for example. There are some of
8 those at issue here. The JEM shows, T.V.
9 productions for Sunbow, Defendant, Sunbow. And,
10 first of all, they have to be accurate in terms --
11 but the producer then files a Q-Sheet with BMI and
12 says here are the participants in the music and
13 these are their contributions, okay?

14 What happened here is that most of the
15 songs, including the Transformers and My Little
16 Pony, but not My Little Pony and Friends, GI Joe,
17 these were not written for T.V. productions
18 originally. They were written as jingles for toys
19 for the usual toy commercial. HASBRO was the
20 ultimate advertising client. HASBRO had these
21 toys. They were all familiar with GI Joe and
22 Transformers, and the others, My Little Pony, and
23 commissioned the agency Griffin-Bacal to do the
24 advertising for it. Griffin-Bacal then goes out
25 and retains a jingle company, in this case Anne

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1 OPENING - PLAINTIFF/MONAGHAN

2 Bryant.

3 Now, one of the themes that the Defendants
4 has tried to argue, well, Miss Bryant was either a
5 fledgling or not very well known or whatever,
6 somewhere along those lines. But Griffin-Bacal
7 was pretty new itself. It only started in or
8 about the time that Miss Bryant was involved with
9 Kinder-Bryant. And so did Sunbow. Okay. Now,
10 maybe they didn't cross their Ts and dot their Is
11 in terms of they way they wanted to do things, but
12 the idea that Miss Bryant was some sort of a
13 second class citizen in the ad agency or the music
14 business versus this big ad agency is just not
15 going to be -- you know, it is not going to be
16 shown by the evidence in this case. It is quite
17 the contrary.

18 So those are the types of royalties we have.
19 Miss Bryant is a talented
20 composer/musician/lyricist. She has one Clio
21 Awards, won Ad Agency Awards. She was -- I'm not
22 going to go through this now, but she is going to
23 testify to her background, her training, from the
24 time she was a young child. She received musical
25 training. Even Mr. Bacal testified she was a very

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1 OPENING - PLAINTIFF/MONAGHAN

2 talented composer.

3 The Court may recall from its prior
4 decisions that Mr. Bacal was unable to even
5 explain why he's given any share of the
6 Transformers on BMI's records. That's in the
7 record. That's in your decisions already. He was
8 less than forthcoming. His son -- we will show
9 you the videos. His son, Jay Bacal, is shown as a
10 producer.

11 You are going to hear from Carole Weitzman.
12 She is an employee of Sunbow. She is on there.
13 They are all in these videos, and nobody can
14 explain how this happened. Mr. Bacal's testimony,
15 which we will read into the record if he doesn't
16 repeat it, is I don't know how that happened, I
17 don't know why I got percentages of songs I had
18 nothing to do with. But he did. And it's on
19 BMI's records.

20 So we have from the limited information
21 we've been able to cobble together substantial
22 damages claims in the millions. So that in the
23 absence of any writing where Miss Bryant signed
24 off those writer's royalties remain hers. She is
25 supposed to have received them. And Sunbow is in

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1 OPENING - PLAINTIFF/MONAGHAN

2 the nature of -- we urge Mr. Bacal and Sunbow,
3 because of the unequal bargaining position she
4 can't exploit these compositions, they do. They
5 go out and they take these compositions, they make
6 the license deals, which are you are going to see
7 are huge. They are supposed to pay her. They are
8 supposed to split. All the treatises say that,
9 the experts say that and Miss Bryant says that
10 that was her understanding. You go out, you take
11 my music, you exploit it, you put it in whatever
12 you want to put it in, I don't care, I'm not
13 controlling it, but when you do, 50 cents of every
14 dollar you get is supposed to be paid to me.

15 So again the copyright is going to be the
16 issue of the copyright. Whether we should have
17 been at Foley Square or not is a red herring. We
18 are here on a case that involves the
19 understandings between the parties. The Court has
20 characterized it as a working arrangement. And
21 that was the arrangement and the understanding.

22 And Transformers is one of the major songs
23 here. And the record will show Mr. Bacal
24 approached Kinder-Bryant about that composition.
25 And the rest is history as far as that song is

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concerned. It was a huge hit. Still is.

Now, Miss Bryant has over the years represented and done work for many well-known ad agencies, not just Griffin-Bacal. Griffin-Bacal is actually a small agency. Worked for Leo Barnett, Great Advertising. She's been involved with commercials and jingles for Kellogg's, Dannon, Budweiser.

And I also want to tell the Court about the relationship of the Defendant to the companies, okay. Mr. Bacal, who is a major shareholder in Griffin-Bacal, Inc., he also testified he was an owner of Sunbow Productions, the T.V. production company which was an adjunct. Sunbow was the owner of two publishing entities: Wildstar and Starwild. Now, when you see the catalog, Judge, you are going to see those names in there, Starwild and Wildstar. One is an ASCAP publisher, which is Wildstar, and Starwild is the BMI publisher. And you will see they are getting shares of these performance royalties. So the songs at issue in the case -- and I would have to set up the equipment to -- we're not going to burden the Court with listening to a whole video

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OPENING - PLAINTIFF/MONAGHAN

or watching, but we've tried to mark -- so we're going to show the Court the music that is on these videos and DVDs and other mechanicals is in fact Miss Bryant's music. And I don't even think if there is a serious dispute about that, maybe there are, but I have not really heard one thus far, that she was the composer as she's indicated. With some exceptions.

Now, one major exception is GI Joe. And I want to point out that in the case of GI Joe, which is also hugely successful, she did not write -- we don't claim that she wrote that music, but in another case that she had in settlement with her former partner Ford Kinder, who is also listed as a witness here, Mr. Kinder turned over his performance rights to GI Joe as part of the -- that settlement to Miss Bryant. So she is entitled by virtue of that settlement to Mr. Kinder's performance interest rights and royalties on GI Joe which was listed in her catalog. It was in her BMI catalog pursuant to their understanding.

Songs in the case are the Transformers. My Little Pony. GI Joe. My Little Pony and Friends.

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The JEM opening and closing themes. JEM is also known as Truly Outrageous. The JEM songs, of which there are 154. Visionaries. There is another song. And we've just learned over the weekend that the Defendants have exploited two other compositions we didn't even know about until this most recent production. The Great Space Coaster, which was Sunbow's first T.V. production Miss Bryant wrote music for. So that is pretty much it. And I won't burden the Court with anything further because I think Miss Bryant will cover it.

We have a case for unjust enrichment. They've reaped huge amounts of money. They have not paid the Plaintiff her share. Mr. Bacal made a whole lot more than \$11,000. He made it through the various licensing deals for which he benefitted. He was able to use Miss Bryant's music by just going in it and using it making deals with other people. You'll see, your Honor, that there are individuals shown that Miss Bryant had no knowledge of, had nothing to do with, and suddenly shown as receiving percentages for songs that she wrote. How did that happen? Mr. Bacal

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testified that he had to make deals. Miss Weitzman testified that Mr. Bacal made the deals. Mr. Bacal and Mr. Griffin. But also Mr. Bacal. You are going to hear testimony, I think, from the Defendant that he wasn't the deal maker. That is in the affidavits. That's not the case. We'll show the Court that Mr. Bacal also was involved in the business deals. In fact, the Transformers was a case in point where he was the one who actually made that deal.

So with that, your Honor, I conclude the opening statement.

THE COURT: All right. We're going to go, I assume, in the order of the caption. For defense statements I'd like to keep it down to ten or 15 minutes.

MS. SAFFER: Well, your Honor, I thought that I will take the full 10, 15 minutes that has been allotted to me.

As you heard in the beginning, BMI is the first named Defendant, but we were not an active participant because we believed that our dispute, if you will, or issues related to BMI, would be resolved in arbitration. Since that was never

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1 OPENING - DEFENDANT BMI/SAFFER
2 commenced and since they seem apparently to be
3 critical to the outcome of this case it seemed
4 appropriate that I join in.

5 I find it also interesting that everybody
6 has worked very hard on all sides in preparation
7 in order to try to clarify matters for your Honor,
8 except perhaps me, because I was just sitting by
9 the -- on the outside watching what was going on.
10 However, I probably better than all the other
11 attorneys and probably more so than anybody in
12 this court understand the underlying, if you will,
13 difficulties since I have been an attorney in the
14 copyright field for 35 years and have been the
15 Assistant General Counsel at BMI for 18 years.

16 So let me just say that Mr. Monaghan who
17 took a crash course in how performing rights
18 organizations operate got some of it right and
19 some of it wrong. The role of BMI is to represent
20 writers and publishers of music. We operate
21 differently, if you will, than any other aspect of
22 the music industry in that our rules and
23 regulations call for the fact that we will pay
24 writers, the human beings, the people that
25 actually wrote the music, one half of the

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1 OPENING - DEFENDANT BMI/SAFFER
2 royalties we collect, and we will pay the other
3 half of the royalties to the publishers, which in
4 the normal course of events are the copyright
5 owners. We will do that even if there is what is
6 known in the copyright field as a "work made for
7 hire".

8 Under the Copyright Law in a work made for
9 hire, the quote/unquote author is the entity that
10 commissioned the work. We say, we don't care, we
11 want to pay 50 percent to the human being that was
12 actually the creative person, and everybody who
13 joins writers and publishers alike know that's
14 what the rules are in the game.

15 Now, in this particular instance, Anne
16 Bryant received the writer's share no matter from
17 BMI, no matter what the deal may have been when
18 she wrote the works. And the question as far as
19 BMI is concerned is did there come a time when
20 things that were originally attributed to her for
21 her creative content which, by the way, nobody is
22 disputing, she is a very talented, very
23 able-bodied composer, to which everybody in the
24 Court will I'm sure can see, but the question is
25 did we take things that we had written -- that

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1 OPENING - DEFENDANT BMI/SAFFER

2 Anne Bryant wrote it originally, and change it in
3 our records.

4 Now, thinking that we were not a party to
5 the case, I never thought that today or in the
6 next couple of days I would have to prove that.
7 But, in fact, one of the other parties, the
8 attorney representing Mr. Bacal, subpoenaed the
9 senior vice-president at BMI who will come to
10 testify actually as his witness to trace what
11 happened on each and every one of these
12 compositions and whether or not somebody else was
13 credited with her writer's share, whether it be as
14 a song or a cue, which is the word used for music
15 written as background to television shows or for
16 commercial jingles. And I think the records will
17 show that, in fact, BMI never changed their
18 records, whatsoever, and that she was always
19 credited from beginning to end with the music that
20 the parties claimed originally she had written.

21 I think the point was made by the attorney
22 representing Mr. Bacal that this whole proceeding
23 will be simplified if you first get a chance to go
24 through that and determine what happened on those
25 particular songs. Then, flowing out of that maybe

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1 OPENING - DEFENDANT BMI/SAFFER

2 somewhere along the line there were some other
3 ancillary arrangements, which -- I don't know,
4 which would have allowed Miss Bryant or should
5 have allowed Miss Bryant to receive additional
6 funding.

7 But, traditionally, in the music industry, a
8 writer is, if you will, guaranteed royalties for
9 the performance. They are not guaranteed the
10 writer royalties for anything else unless they
11 have contractually negotiated that. And there
12 will be witnesses on behalf of SONY, I believe,
13 and others music industry experts which will talk
14 about the -- what the practices are in that field,
15 and whether or not Miss Bryant should have gotten
16 additional royalties for other things under other
17 circumstances.

18 So at least in terms of the beginning of
19 this case and at least in terms of the role of
20 BMI, we are prepared through a witness called by
21 Bacal to show in fact that Anne Bryant has been
22 credited from the beginning, from the early 1980s
23 to date, with the things that she wrote.

24 Thank you.

25 THE COURT: Okay. All right, let's see, who

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1 OPENING - DEFENDANT BMI/SAFFER
2 is next? Kinder and company.

3 MR. MONAGHAN: He settled, Judge.

4 THE COURT: He settled. That's right.
5 Okay.

6 MR. TANNENBAUM: Mr. Bacal.

7 THE COURT: What about Vadivox?

8 MR. MONAGHAN: That was part of the Kinder
9 settlement.

10 THE COURT: Okay. Let's get then to Mr.
11 Bacal.

12 MR. TANNENBAUM: Again, David Tannenbaum,
13 and I'll try to be very brief, your Honor.

14 THE COURT: All right.

15 MR. TANNENBAUM: There is one thing that I
16 think really needs to be said to clear things up
17 because they really have done a great job of
18 mixing a lot of concepts and potential rights
19 together to make it look like something happened
20 here.

21 Let's deal with what BMI does, and Miss
22 Saffer can explain it a lot better than I can, I
23 am glad she is now involved in the case. BMI,
24 what they do is they track public performances of
25 musical compositions. Has to be very clear here,

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
2 Judge, BMI has nothing to do with tallying any
3 kind of sums that are made for selling
4 videocassettes, which is for home use or CDs which
5 is for home use. It is only public performance
6 royalties. Somebody goes on American Idol and
7 sings an Elton John song. Elton John is entitled
8 to some kind of money. There has to be a way of
9 tracking it. He can't keep flipping T.V. stations
10 all the time. Is he BMI. There is a couple of
11 different performance societies. I was hoping I
12 would pick one that was BMI. I just threw that
13 out.

14 What they do is they have people who track
15 performances, whether it is in movie, on a T.V.
16 show or somewhere else, as a public performance so
17 that the writers and the publishers can get paid
18 for somebody using their work. There are two
19 separate shares and, again, that has nothing to do
20 with DVDs, CDs, which I will get to a little bit
21 later unless I forget. There is a writer's share
22 and publisher's share. The writer's share goes to
23 the person who composed the composition. If it is
24 one person, that person gets 100 percent. If it
25 is more than one person, it gets whacked up,

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
2 divvied up to be fair.

3 We will show you in each case in this
4 instance in the 1980s, your Honor, when these
5 songs were written by Miss Bryant, either alone or
6 with Mr. Bacal contributing some lyrics or
7 somebody else, they were registered in a certain
8 way and she was making a lot of money on these
9 writer's shares and performances because these
10 T.V. shows were first run and on the air in
11 television. You had Transformers. Mostly
12 children's cartoons. My Little Pony. JEM. It's
13 in between my age and my kid's age, so I didn't
14 watch those shows, but they were popular in the
15 80s. They are not shown anymore here and that's
16 why her royalties are going down. Nobody changed
17 anything.

18 And we will show you, as we have several
19 times, I don't know why it has not been effective,
20 we've tried it several times, we have the 1099
21 statements from BMI showing exactly what Joe Bacal
22 got paid from 1994 to date for his writer's share
23 of public performance royalties. Again, I'm not
24 talking about CDs, not talking about
25 direct/indirect, that company, his company -- not

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
2 trying to be Jackie Mason here, but I almost did.
3 Just his writer's share of performance royalties.
4 We have the 1099s. Those 1099s show that for that
5 entire period of time he received approximately
6 \$11,000. I didn't want to have to break that down
7 because I didn't want to spend time on this case,
8 but we'll now show you that about \$9,000 of that
9 money has absolutely nothing to do with any song
10 that Miss Bryant worked on. They'll probably
11 agree to that because she didn't work on those
12 songs. So we are talking about a very small,
13 little amount of money. And now we are going to
14 show you with respect to that there were no
15 changes and he was entitled to those shares
16 because when they were registered in the 1980s.
17 They were registered a portion for Miss Bryant and
18 a portion for Mr. Bacal. Sometimes a portion for
19 Mr. Kinder. Depended on who worked on it.

20 And, by the way, Mr. Bacal had nothing to do
21 with those registrations. He and his partner Tom
22 Griffin started an advertising agency and a
23 television production agency. They had no
24 experience, whatsoever, with DDM performance
25 royalties so they hired an administrator, a

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
 2 gentleman by the name of Mr. Dobishinsky. Mr.
 3 Dobishinsky is the one who, working with Anne
 4 Bryant's partner Ford Kinder, would actually do
 5 the filings. He is the one, we believe, did the
 6 filings. Bryant had nothing to do with that. So
 7 the original shares -- which, by the way, are not
 8 in the case, your Honor, they are trying to get
 9 them in the case, they are trying to say now
 10 because we tried to show them nothing changed in
 11 the 1990s, now they are trying to claim way back
 12 in the 1980s when they were originally registered
 13 they were registered incorrectly.

14 Two problems with that. It's not in the
 15 complaint, not in the theory of their case. Not
 16 in the complaint. And if the statute of
 17 limitations doesn't bar that, I don't know what
 18 does.

19 We'll also show by 1990 she knew exactly
 20 what was in her catalog. That is the writer's
 21 share of BMI Productions. The producer gets
 22 100 percent of that share -- excuse me, publisher.
 23 I'm new to the copyright field too. The
 24 publisher's share. 100 percent publisher's share.
 25 100 percent writer's share. There is no claim

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
 2 ever here until today as I can tell that Miss
 3 Bryant is entitled to any of the publisher's
 4 share. That belonged to the publishing company.
 5 She wasn't just supposed to get 100 percent of all
 6 the money all over the place for giving a song for
 7 a T.V. Series. There is a reason they hire
 8 somebody to write a song for T.V. Wildstar and
 9 Starwild received those shares.

10 I've been puzzled by submissions in the
 11 affidavit that somehow Joe Bacal made \$238,000,
 12 when I've got the 1099s. I've got his tax
 13 returns. I've got the internal documents from BMI
 14 that show he got \$11,000. I think what I'm
 15 hearing now is she is making a claim for the
 16 Starwide and Wildstar publishing shares to get up
 17 to this 238,000-dollar number. That has nothing
 18 to do with anything that's in this case.

19 Now, we have this one paragraph that appears
 20 in the complaint not connected to anything else,
 21 it's in the amended pleading, by the way, that
 22 says somehow Joe Bacal is getting money for
 23 videotapes and CDs and other things. And in their
 24 motion papers they pointed out something that we
 25 didn't know because, as a matter of fact, he had

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
 2 sold his shares, as all the other shareholders in
 3 his company, in Sunbow in 1998 to SONY; that
 4 apparently sometime in 1999 SONY entered into a
 5 deal with I think called -- Rhino is the name of
 6 the company, to sell these things on
 7 videocassettes I think somehow this is making
 8 money for Joe Bacal or somebody else. The CDs and
 9 the videocassette claims have absolutely nothing
 10 to do with Mr. Bacal. He was gone from the
 11 company in 1998. We'll show you the documents
 12 that show he is gone from the company in 1998.
 13 Nothing in there that says he is entitled to any
 14 percentages or anything after 1998. We'll show
 15 you his tax returns that showed he didn't get any
 16 money for this stuff before 1998 -- after 1998.

17 Now, also, I think I'm hearing a claim that
 18 while the company was doing business they were
 19 making money by selling videotapes and CDs. Of
 20 course they were. It is part of their business.
 21 It is money that Sunbow owned -- excuse me, Sunbow
 22 earned. I'll let Miss Phares deal with the Sunbow
 23 issues. But the claim that somehow Mr. Bacal is
 24 Sunbow, we will show you in ten minutes it is
 25 ridiculous. He never even owned a majority of the

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1 OPENING - DEFENDANT BACAL/TANNENBAUM
 2 voting share of these two companies. That was
 3 owned by Mr. Griffin. We'll bring Mr. Griffin in.
 4 We'll show you the documents. There is a wild
 5 claim out there somehow he is the alterego. It is
 6 not true. We'll show it to your Honor.

7 Again, if we can just try the case on the
 8 re-registration claim you will see very quickly
 9 there is nothing there.

10 Thank you, your Honor.

11 MS. PHARES: Your Honor, Sunbow is a T.V.
 12 production company. And it is important to
 13 remember that because there will be attempts to
 14 introduce many witnesses from the record business,
 15 which is a different kind of a business. T.V.
 16 production companies are producing what in
 17 copyright world is known as audiovisual work, a
 18 T.V. production or movie. And to make sure they
 19 get all of the rights they secure from independent
 20 contractors, like Miss Bryant, work made for hire
 21 agreements. And those kinds of agreements, unlike
 22 the one that Mr. Monaghan was talking about
 23 earlier that the Supreme Court was addressing,
 24 those kinds of agreements have to be in writing.
 25 The Copyright Act says there are two kinds of ways

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1 OPENING - DEFENDANT SUNBOW/PHARES
2 of saying a work made for hire, and if you are
3 dealing with an independent contractor it must be
4 in writing.

5 And there are benefits from having a work
6 made for hire. It means that there can be no
7 termination of the rights in years to come; that
8 the property that's being created will no longer
9 have people coming in later and saying, you know,
10 you have to make new deals with me.

11 So Sunbow, which was a -- maybe a new but
12 certainly a well put-together organization, used
13 work made for hire agreements with all the
14 creative people with whom it operated. And that
15 was the case in this case. And, as I think your
16 Honor knows, it has been Sunbow's contention that
17 indeed Kinder & Bryant signed work made for hire
18 agreements.

19 Now, the way that work made for hire
20 agreements works is that as part of that agreement
21 the performance rights to which we know that BMI
22 is going to pay to Miss Bryant in any case are
23 licensed back to her. Those are the performance
24 rights that are licensed back for her. She is
25 also by contract given certain other rights. She

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1 OPENING - DEFENDANT SUNBOW/PHARES
2 has the right to mechanical royalties if a record
3 is made. She is entitled to certain limited
4 synchronization rights. But the contract doesn't
5 provide for royalties from a home video
6 production, that is a reproduction of the original
7 entire work, not just the music in a home video
8 format.

9 If there had been a disagreement about the
10 home -- the work made for hire agreement that Miss
11 Bryant and her -- rather her company signed, that
12 would be an issue that would properly be before
13 this Court. When this case started there was --
14 there are only claims pled with respect to the
15 performance rights. As far as I can tell, and I
16 don't think Miss Bryant disagrees, there is no
17 suggestion that she has no objection to the
18 publisher having received the publisher's share of
19 the performance rights. That was customary in the
20 business and there is also no issue in this case
21 that Sunbow received any part of the writer's
22 share.

23 So Sunbow, in fact, had a very minor role in
24 this case until last November. And then last
25 November, after we had moved for summary judgment

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1 OPENING - DEFENDANT SUNBOW/PHARES
2 to show that there in fact were no claims on the
3 performance rights, in opposition to that Miss
4 Bryant for the first time claimed that she was a
5 copyright owner. She introduced this issue that
6 her jingles in fact or, rather, that the music in
7 the Sunbow productions were derivative works, and
8 other copyright issues. We removed that -- after
9 we had determined or it was clear that the Court
10 thought that it was entitled to go forward on
11 those issues, we removed that case to Federal
12 Court.

13 Now, in Federal Court there was no question
14 that Judge Owen thought those were copyright
15 issues. But at the end of the argument Mr.
16 Monaghan stood up and he said: "I am telling the
17 Court there is no -- despite what we said in our
18 brief, our brief was a little over the top on the
19 issue, and I will be candid with you -- we are not
20 demanding any relief under the Copyright Act." With
21 that, Judge Owen returned the case to State Court.

22 Now, in the most recent affidavits Miss
23 Bryant is again claiming that she is a copyright
24 owner. But, more importantly, she is also now
25 denying that she ever signed an agreement. Now,

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1 OPENING - DEFENDANT SUNBOW/PHARES
2 what's really interesting about this is that the
3 first time that she claimed to be a copyright
4 owner is in November, after Sunbow had made
5 production of the unsigned JEM Agreement. And
6 Plaintiffs became aware that -- and became aware
7 in our pleadings that the other agreements had
8 been lost in a flood. So now we are in a position
9 where Miss Bryant is claiming that she does not
10 have an agreement. And she says she doesn't have
11 an agreement and that she is a copyright owner and
12 that she is making claims to monies as a copyright
13 owner.

14 Now, if that is the case, this Court does
15 not have jurisdiction. If she agrees that she
16 signed an agreement, even if it is lost, and we
17 think that she did sign an agreement, then we are
18 properly in this Court. But, if not, her claims
19 arise under the Copyright Act. The derivative
20 work claims, the ownership claims, all require
21 construction of the Copyright Act, and the cases
22 are clear that you may not use another label. If
23 you call it unjust enrichment, if it is still a
24 copyright claim, then it is pre-empted and there
25 is no jurisdiction in this Court.

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1 OPENING - DEFENDANT SUNBOW/PHARES

2 And I hear Mr. Monaghan saying in his
3 opening statement we'll at least wait to see if
4 his client confirms him that there is no written
5 agreement in this case. If that is the case, then
6 on the issues that were pled in November, long
7 after the close of discovery and after they
8 discovered we did not have copies, signed copies
9 of the agreements, then those cases -- those
10 issues are completely pre-empted.

11 Your Honor, Mr. Tannenbaum and I have tried
12 to prepare, if it would help you, a chart which
13 maps out the claims made that were pled originally
14 in this case, and also the claims that were not
15 pled, which I would be happy to offer up to you.

16 I think we still all remain prepared and
17 believe that the Court has jurisdiction on the
18 performance rights issues. But if the evidence
19 develops as it sounds like it is going to be then
20 I respectfully submit that your Honor does not
21 have jurisdiction over these claims with respect
22 to what effectively are Miss Bryant's claims to be
23 an equal co-owner with Sunbow in these -- in this
24 music.

25 THE COURT: Has Plaintiff received a copy of

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1 OPENING - DEFENDANT SUNBOW/PHARES

2 that?

3 MS. PHARES: I'm offering it as we speak.

4 MR. MONAGHAN: Thank you very much.

5 THE COURT: All right. Thank you.

6 Who else have we got?

7 MR. TANNENBAUM: That's it, your Honor.

8 MR. MONAGHAN: That is it for openings, your
9 Honor.

10 THE COURT: We'll break for lunch now. And
11 I've got a quarter after twelve -- let's go ahead.
12 You've got 15 minutes. We'll use it up until
13 12:30.

14 Go ahead.

15 MR. MONAGHAN: Thank you, Judge. I call the
16 Plaintiff, Anne Bryant.

17 COURT OFFICER: Place your left hand on the
18 Bible, raise your right hand, face the Judge.

19 THE COURT: Do you solemnly swear the
20 testimony you shall give before this Court shall
21 be the truth, the whole truth and nothing but the
22 truth, so help you God.

23 THE WITNESS: I do.

24 THE COURT: Please be seated.

25 Thank you. You may inquire.

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2 COURT OFFICER: Give your name and address
3 to the court reporter and spell your name.

4 THE WITNESS: Carol Anne Bryant. C-A-R-O-L.
5 A-N-N-E. B-R-Y-A-N-T.

6 I live at 21 Collaberg Road, in Stony Point,
7 New York 10980 -- 10980.

8 C A R O L A N N E B R Y A N T,
9 the Plaintiff, having been first
10 duly sworn by the Court, was
11 examined and testified as follows:

12 MR. MONAGHAN: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MR. MONAGHAN:

15 Q. Miss Bryant, I saw you brought a pad up
16 there, and I'm sure that counsel would like to know
17 what that is and why you brought it up to the stand.

18 A. It's a pacifier. I feel nervous. When I
19 feel nervous I like to scribble.

20 Q. Is that a doodle pad?

21 A. Doodle pad. I was just playing around with
22 it.

23 MR. MONAGHAN: We have no objection to them
24 looking at it during the course of the case. Miss
25 Bryant indicates she likes to doodle.

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2 A. Helps me think, remember things.

3 MR. MONAGHAN: They can look at it, if they
4 wish.

5 THE COURT: Let's go on.

6 Q. Miss Bryant, you are the Plaintiff in this
7 action, are you not?

8 A. Yes.

9 Q. Your complaints in this case concern certain
10 musical compositions, do they not?

11 A. Yes.

12 Q. Can you briefly identify them? And we'll
13 come back to them, but just for a starting point.

14 A. The Transformers. These are themes which
15 also is called Robots in Disguise. My Little Pony and
16 Friends. My Little Pony. GI Joe. The Real American
17 Hero. JEM, also called Truly Outrageous. There are
18 several others.

19 Q. Visionaries?

20 A. Visionaries.

21 Q. How about Robotics?

22 A. Robotics. Humanoids. Big Foot. I just
23 learned about that. And The Great Space Coaster. I
24 think that's all of them.

25 Q. And some of these compositions were -- well,

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let me ask you another way.

Can you tell the Court now which of these compositions were composed as music for T.V. productions and which were composed for some other reason?

A. Well, the first one was The Great Space Coaster in 1978. It was for Sunbow's first show, actually. And then JEM, of course, was a television show first and later became a jingle attached to the show with products that spun out of the show.

My Little Pony and Friends.

Q. How is that different, if it is, from My Little Pony?

A. Well, My Little Pony was the first theme. And within the My Little Pony and Friends theme that I did, we harken back, we do a little tip of the hat melodically to My Little Pony, about six bars in the middle of the theme.

Q. Are there any other of those compositions that were for T.V. productions?

A. Yes.

I forgot something. My Little Pony and Friends had another theme called Funny Friends. And it always said England on my statements. I think it was

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an alternate theme for that country.

Q. Okay. Now, let's go down the songs just to make sure we are clear with the Judge.

Transformers: T.V. production or --

A. It was a jingle first.

Q. Jingle for a toy?

A. Yes.

Q. My Little Pony. Just, My Little Pony.

A. A jingle for a line of toys.

Q. What about GI Joe?

A. It was a jingle first.

Q. Okay. And what was your participation in GI Joe?

A. Well that was written by Ford Kinder in about 1979 when we were both employees at Michelin Company. So, subsequent to that, it was a successful jingle and then I think it became the T.V. show. And at our own company, before we went into business, Kinder & Bryant, we worked to create a movie theme for that called GI Joe The Movie.

Q. So it was first a jingle?

A. Yeah.

Q. Toy jingle?

A. So he wrote it. And we developed it for

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other uses somewhat at Kinder & Bryant, and I did the arrangements. These were big orchestra days. I was a well-known arranger.

Q. Why is that song an issue in this case if he wrote it?

A. Well, when Ford and I finally figured out how to separate Kinder & Bryant a few years ago and we came to a settlement and I had received no money from my company he said, well, everything that's in your BMI catalog, which Sunbow's administrator had put some of those things in my catalog without my permission, he said, keep them, they are yours. You no longer have to split them back with me. We used to split everything Ford and I.

Q. Okay.

A. So then I lost out on that. It was a worthless item of settlement.

Q. But you are here bringing an action for the performance royalties relative to GI Joe; is that right?

A. Yes.

Q. Okay. And that's as a result of your settlement with Mr. Kinder?

A. Yes.

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Q. And you let -- because the GI Joe was in your BMI catalog at the time you settled with Kinder?

A. Yes.

MR. TANNENBAUM: Objection, your Honor. I want to move things along, but he is leading the witness.

THE COURT: Yes, try not to.

MR. MONAGHAN: All right, Judge.

Q. Have you ever been known by any other name?

A. Well, I was born Carole Anne MacDougal in 1950.

Q. Okay. How did your name change come about?

A. My mother surrendered me for adoption when I was a year old. I was adopted by Roger and Dorothy Bryant on Christmas Eve, 1951. I became Carole Anne Bryant, but they call me Anne Bryant.

Q. How old are you now?

A. I'm 53.

Q. Where do you live?

A. I live in Stony Point.

Q. Okay. And how long have you been here?

A. I bought that house in 1987. It was a weekend house initially, but I moved there full-time in 1991.

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2 Q. Okay. Where is it in Rockland?

3 A. It's in North Rockland. One of those river

4 towns, you know.

5 Q. What is the name of it?

6 A. Stony Point. I'm sorry.

7 Q. Okay.

8 MS. PHARES: Objection, relevance.

9 MR. MONAGHAN: This is biographical

10 information.

11 THE COURT: It is not relevant, but I guess

12 it's background or something. I'll allow it.

13 Q. Okay. Are you married, ma'am?

14 A. I'm divorced.

15 Q. Okay. And what is your occupation?

16 A. I'm a composer and a producer. And I create

17 music, I arrange it. There are so many parts to that

18 now. I used to write music for an orchestra, now I do

19 it on synthesizers and electronics. And I'm a

20 recording engineer too.

21 Q. Do you sing? Play instruments?

22 A. I sing. I do voice-overs. I play

23 keyboards.

24 Q. What is your current employment?

25 A. My current employment is Square Business

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2 Music with -- Ltd. Which has been my company since

3 1977. It has always had my personal services, but I

4 have a d/b/a for that called Music & Art. Name of a

5 high school I went to.

6 Q. Where are the offices of Square Business?

7 A. In Garnerville, New York, which is about a

8 mile from my house. It's in the Civil War Union

9 Factory.

10 Q. Who works there besides yourself?

11 A. Just me.

12 Although, lots of artists work there. Kind

13 of a Soho on the Hudson.

14 Q. What do you actually do there?

15 A. I have two recording studios. My favorite

16 studios I've ever had. And, you know, factories are a

17 great place for a recording studio because you can work

18 with power and, you know, space. It is an artist

19 complex.

20 Q. What is the business that is done there?

21 A. I write music for commercials and

22 documentaries and like that.

23 Q. Can you give the Court the names of some

24 clients of Square Business?

25 A. All right. Some recent clients last couple

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2 of years you mean?

3 Q. Sure.

4 A. Since I was there?

5 I work a lot for Arm & Hammer. I do their

6 baking soda and their tooth -- toothpaste. And cat

7 litters and whatnot. And I work for Nair and Arid. I

8 do a lot of, you know, name brand jingles. I did the

9 Ultramax series with Jason Giombi. What a cute guy.

10 Q. Giombi?

11 A. He's a football player. I'm only kidding.

12 He's a baseball player.

13 Q. Talking about the New York Yankee?

14 A. Yeah, New York Yankee.

15 Q. Are you associated with any other entities

16 currently at this time?

17 A. Yes. I'm music company for the Joey Company

18 & Advertising Agency, president of that company. And

19 founder is Josephine Cummings. She's on the Queen Mary

20 II right now.

21 MS. PHARES: Objection, your Honor, if Miss

22 Bryant is going to read from her pad.

23 THE WITNESS: I'm not reading. There is

24 nothing here.

25 MS. PHARES: Okay.

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2 THE WITNESS: As a matter of fact --

3 THE COURT: The pad will be available for

4 anyone who wants to look at it.

5 THE WITNESS: Here, you can have this. It's

6 doodles.

7 MR. MONAGHAN: If you don't mind, please

8 look up so it doesn't appear as though you are

9 reading.

10 THE WITNESS: Oh, okay.

11 MR. MONAGHAN: That will be better.

12 THE WITNESS: I feel like Bob Dole with his

13 pen, holding onto something.

14 BY MR. MONAGHAN:

15 Q. What do you do for the Joey Company?

16 A. Music director and consultant for Joey's Ad

17 Agency. And we worked together for about 30 years, so

18 our whole careers -- I write an awful lot of music for

19 them too.

20 Q. What are some of the clients of the Joey

21 Company?

22 A. Well, Arm & Hammer is their biggest client.

23 THE COURT: There is a problem with

24 relevancy with this counsel.

25 MR. MONAGHAN: Well, because the Defendants

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made an issue and I assume they will in their papers that the issue is about the kind of fees that Miss Bryant could come in. Your Honor may recall that one of the points that was made by Miss Bryant in her affidavits was we took a lower creative fee up front to make sure that we kept our writer royalties. So that --

MR. TANNENBAUM: Twenty years ago.

MR. MONAGHAN: -- her background -- we can make it more current, but I mean her background in the music business --

THE COURT: Apparently there's been an agreement that this lady is a very active musician, et cetera.

MS. PHARES: She is, your Honor. There was a point made that she was new in the television production business in the early 80s. I don't think that's what this testimony is directed towards.

THE COURT: I just want to keep it moving.

MR. MONAGHAN: I'm doing my best, Judge.

THE COURT: Personally, I want you to know, Miss Bryant, I'm very interested in this, but we have a record and we don't want to get it any

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there.

And then I got a Master of Fine Arts at SUNY Purchase Conservatory, Classical Conservatory, in classical composition. And then after that I studied intensive Spanish for a couple of years so that I could write in Spanish -- read and write in Spanish. Then I got a Ph.D. in music in contemporary media. And then my last new study is this new recording thing we're doing called Pro-Tools, the standard of production in the industry. And I work with it, but I want to be an expert, so I've taken two out of three levels for expert training. That's --

Q. This is what? Electronic music?

A. Yeah, very wonderful.

Q. Okay, very quickly --

A. Recording production.

Q. -- could you describe your formative years growing up, especially as it relates to musical training and experience.

MS. PHARES: Objection.

THE COURT: Sustained.

THE WITNESS: What does sustained mean? It is okay?

MR. MONAGHAN: No, sustained means you can't

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longer than this.

THE WITNESS: It is getting really long.

Q. Okay, with that admonition about being brief, let me just ask you to run through your educational background as quickly as you can.

A. From the beginning up?

Q. Well, skip kindergarten.

A. Skip kindergarten, all right.

I went to grade school in Brooklyn and Manhattan. I went to the High School of Music & Art. That took me through high school. Went to the Eastman School of Music. First, I went to Berkeley -- I forgot I went to Berkeley -- for an intensive year in Boston. Music. And then I came back to New York. I studied recording engineering for a year. And my mother was very sick and she died. I started school in Eastman School of Music, in Rochester. So I came home. Then I continued at Eastman for five intense summers, although I never pulled that degree together for about 15 years, but I got a Bachelor of Music there.

Q. Where is that? Berkeley?

A. No, no, Eastman School of Music --

Q. I'm sorry.

A. -- composition. All classical training

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answer it.

THE WITNESS: Okay. What's the other one?

MR. MONAGHAN: It's overruled.

THE WITNESS: Overruled.

Okay, sustained.

THE COURT: It's really stop and go soon.

THE WITNESS: All right.

BY MR. MONAGHAN:

Q. In the context of the music business with which you've been associated, I'll try and touch upon some of the other companies very quickly, but what is a union shop? What does that mean?

A. It means a company that's signatory to union codes and practices, like the Screen Actor's Guild. After which is the American Federation of Television and Radio Artists, and the Union --

MS. PHARES: Objection, your Honor.

A. -- American Federation --

THE COURT: Every time there is an objection just hold for a minute.

THE WITNESS: Yeah.

MS. PHARES: Objection, relevance. There are no issues in this case regarding any kinds of performance unions.

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2 THE COURT: All right. Counsel, do you
3 claim there are?

4 MR. MONAGHAN: No. It actually -- not in
5 this case. But it does relate to the practices
6 and her customary business policies.

7 THE COURT: That's sustained the objection.

8 All right, we're going to break for lunch.

9 For those of you that are out-of-towners I
10 understand that this is the mecca for cuisine for
11 Rockland County. Mr. Potato, whatever it is, is
12 right across the street. Generally, we'll go from
13 12:30 to two. We'll work from two to 4:30 to
14 five, depending -- 4:30, 4:45, depending who is on
15 the stand and how close we are to being finished.

16 Have a nice lunch.

17 MR. MONAGHAN: Thank you, Judge.

18 (Luncheon Recess: 12:30 p.m.)

19 A F T E R N O O N S E S S I O N

20 (Reconvened: 2:00 p.m.)

21 (Resumed on the record, in open court -
22 counsel and parties present as previously noted)

23 THE COURT: All right, Miss Bryant, please
24 take the stand.

25 MS. PHARES: Your Honor, if I may be heard

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1 - APPLICATION -

2 Now, it seems quite clear here that
3 because -- because the Plaintiff's position is
4 that she has now never entered into an agreement
5 that is written she is holding herself out as a
6 copyright owner. When she is claiming rights
7 to -- what is it, 50 percent of -- 50 percent on
8 the dollar, Mr. Monaghan said of everything that
9 Sunbow earned she is claiming to be a copyright
10 owner in the work. And, your Honor it is
11 really -- I think it is pretty clear does not have
12 jurisdiction of this issue. That this is an issue
13 that is subject to dismissal because it's
14 pre-empted by the Copyright Act and we, you
15 know -- without a ruling we aren't in a position
16 to know where we are to go next.

17 THE COURT: Well, I'm taking it that on the
18 part of the Plaintiff that there is no relief
19 requested under Copyright Law; is that not right?

20 MR. MONAGHAN: That's correct.

21 MS. PHARES: But if in fact, your Honor,
22 their claim sounds in copyright they can call it
23 unjust enrichment. And there are cases, in fact
24 the Second Circuit just affirmed 12 weeks ago in
25 which the parties came in claiming unjust

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2 before we begin.

3 The one issue on which I do think that
4 Defendants are entitled to a ruling is the issue
5 of the jurisdiction, because it seems based on Mr.
6 Monaghan's opening in which he is now saying quite
7 emphatically that there is no written agreement in
8 this case, then just because of the way the
9 Copyright Act works, the way the Copyright Act
10 says that a copyright arises in an author when the
11 author has written something, and the only way in
12 which it can be transferred is in writing. And,
13 in fact, it says that a transfer of copyright
14 ownership other than by operation of law is not
15 valid unless an instrument of conveyance or a note
16 of memorandum of the transfer is in writing and
17 signed by the owner. And, similarly, the work
18 made for hire provision that is applicable to it
19 independent to an independent contractor makes
20 very clear that it shall be considered or made for
21 hire only if it is one of the works, and if it is
22 in writing and signed by -- if the parties
23 expressly agree in a written instrument signed by
24 them that the work shall be considered a
25 work-for-hire.

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2 enrichment, but the Court looks at it and says if
3 in fact what your facts and the law present is
4 effectively a copyright claim, then it is
5 pre-empted and cannot be heard as an unjust
6 enrichment claim.

7 THE COURT: I have a problem here because
8 the Federal Court unfortunately has thrown this
9 case out.

10 MS. PHARES: Well, it did so on a
11 representation by Mr. Monaghan that he was not
12 pressing his copyright claims. But now that he is
13 back here he is.

14 THE COURT: Well, this Court is not going to
15 grant any relief under the Copyright Law, I
16 guarantee you.

17 MR. MONAGHAN: They are completely
18 mischaracterizing what this case is all about. It
19 isn't a copyright case. You've already ruled
20 that. The Federal Court ruled that.

21 MS. PHARES: They did not rule that, Mr.
22 Monaghan.

23 MR. MONAGHAN: Well, if it didn't we
24 wouldn't be here. Excuse me, I didn't interrupt
25 you. I would appreciate the same courtesy.

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MS. PHARES: I beg your pardon.

MR. MONAGHAN: Your Honor, we've done battle on this subject with extensive briefs throughout before both your Honor and before the Federal Court. We have law of the case that -- we are not here seeking copyright relief. We are not seeking to prevent anybody from copying it. We are not seeking --

THE COURT: Well, I think the problem goes like this that as this case goes along or at the end of your Plaintiff's case you are looking for damages which this Court finds are grounded in a copyright cause of action, a quasi copyright cause of action, you are not going to get it.

MR. MONAGHAN: Well --

THE COURT: You have unjust enrichment which I'm going to listen to, and let's see how it develops.

The request of the Defendant is reserved because I'll tell you the truth this case has been going around and around and around since 2001, and we've had motions and on top of motions here, and I've tried to continually get the perspective of the case down so it's manageable. And the -- and

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I really don't want a case that is all over the field. As far as I'm concerned, now that you have Miss Bryant on the stand, let's hear what she has to say. Let's get her cross-examined. And then maybe or maybe not it might be a time to look back again at where we are going here.

MS. PHARES: Thank you, your Honor.

THE COURT: All right. Miss Bryant, you may take the stand. You are still under oath.

CAROL ANNE BRYANT,
the Plaintiff, previously duly sworn
by the Court, resumed the stand
and testified further as follows:

THE WITNESS: I have a pen and reading glasses. Okay? Pen and reading glasses.

MR. MONAGHAN: Okay.

THE COURT: Let's go.

DIRECT EXAMINATION

BY MR. MONAGHAN: (Continued)

Q. Miss Bryant, when we left off we were -- we had gone over your background, although not as extensively as we hoped we would. But, nonetheless, we were at a point where I was about to ask you about your experience in the music business in terms of the jingle

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business and what companies you were associated with that were involved in the jingle business. So that's the subject matter.

What was the name of the first entity within which you were involved that was in the jingle business?

A. Comtrek in Chicago. Commercial Musi-Cast that I worked for.

Q. When was that?

A. 1972, I think, or three to 1977.

Q. Okay, the next one?

A. Michelin & Company.

Q. Okay. And where is that located?

A. In New York City.

Q. What was the nature of the business?

A. Commercial music production.

Q. What were you to that company?

A. I was music director, vice-president and writer.

Q. And what Performing Rights Society were you a member of when you were at that company?

A. BMI. I've always been at BMI since I was 21.

Q. Let me show you, please, Exhibit --

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THE COURT: Have these been premarked?

MR. MONAGHAN: No, but we have copies for them and Defendants have these. This is the BMI --

THE COURT: Is this in contention, whether Miss Bryant is a member of BMI?

MS. SAFFER: No, your Honor. There is not -- there is no issue she is a member of BMI.

THE COURT: Is that why you are offering this, counsel?

MR. MONAGHAN: Well, this is her BMI agreement.

THE COURT: All right.

MR. MONAGHAN: I mean --

THE COURT: Let's have it marked as Plaintiff's 1.

(Plaintiff's Exhibit No. 1, Bryant's BMI agreement, marked for identification)

MR. MONAGHAN: If there is no objection, we'll ask it be moved into evidence.

MS. SAFFER: No objection.

MS. PHARES: No objection.

MR. TANNENBAUM: No objection.

(Plaintiff's Exhibit No. 1, marked and

<p style="text-align: right;">Page 78</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 received in evidence)</p> <p>3 Q. Miss Bryant, the court officer has shown you</p> <p>4 Exhibit 1 in evidence.</p> <p>5 A. Yes.</p> <p>6 Q. That's your BMI agreement, is it?</p> <p>7 A. Yes.</p> <p>8 Q. And when was that agreement signed?</p> <p>9 A. I remember it was September 3rd, my</p> <p>10 birthday, 1971.</p> <p>11 Q. Okay. And you've been a member of BMI since</p> <p>12 then?</p> <p>13 A. Yes.</p> <p>14 MS. SAFFER: Asked and answered.</p> <p>15 Q. What is your understanding of what BMI is?</p> <p>16 A. BMI is a -- I think they are a non-profit</p> <p>17 organization, but they have writer members they call</p> <p>18 affiliated and publisher affiliated who are</p> <p>19 member/publisher affiliated, and they track and collect</p> <p>20 performances for the writers and publishers, and they</p> <p>21 pay royalties based on an exotic formula that I don't</p> <p>22 really understand. But appropriate royalties based on</p> <p>23 these performances that the writers have cleared in</p> <p>24 their catalogs and the publishers have cleared in</p> <p>25 theirs.</p>	<p style="text-align: right;">Page 80</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 THE WITNESS: Yes, BMI Publishing Company.</p> <p>3 But I don't have any titles in it, I don't think.</p> <p>4 MS. PHARES: I just think that Miss Bryant</p> <p>5 is not really competent to testify about --</p> <p>6 THE COURT: I think some kind of broad</p> <p>7 brush. I'll allow it.</p> <p>8 THE WITNESS: That is to my understanding.</p> <p>9 MR. MONAGHAN: I asked for her</p> <p>10 understanding.</p> <p>11 THE COURT: Her understanding may not be</p> <p>12 what is going on.</p> <p>13 MR. MONAGHAN: They are free to put anyone</p> <p>14 they want on the stand.</p> <p>15 THE COURT: Okay, now we've gotten her</p> <p>16 understanding, let's go on.</p> <p>17 Q. All right, now getting back to Michelin.</p> <p>18 Were you ever associated with a company</p> <p>19 called Michelin & Company?</p> <p>20 A. Yes.</p> <p>21 Q. What period of time?</p> <p>22 A. 1977 to 1981.</p> <p>23 Q. And during this period of time what, if any,</p> <p>24 contacts did you have with either Griffin Bacal or Mr.</p> <p>25 Bacal or Sunbow? That's the '77 to '81 Michelin</p>
<p style="text-align: right;">Page 79</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. What is a publisher? What is your</p> <p>3 understanding of a publisher?</p> <p>4 A. A publisher is an administrator who accounts</p> <p>5 to its writers for 50 percent of what they</p> <p>6 administrate. They do the administrative chores. They</p> <p>7 receive -- except when it comes to BMI, each -- the</p> <p>8 writer and the publisher get their own check directly.</p> <p>9 The publisher receives money, negotiates licenses and</p> <p>10 accounts to their writers.</p> <p>11 MS. PHARES: Your Honor, I'm going to object</p> <p>12 to this because this witness really is not</p> <p>13 competent to testify to what a music publisher is.</p> <p>14 She is talking -- she is guessing about this. And</p> <p>15 there are other witnesses who can testify to this</p> <p>16 more appropriately.</p> <p>17 THE COURT: Well, as long as she keeps it</p> <p>18 very general. In other words, I would like to</p> <p>19 know whether Miss Bryant is a writer according to</p> <p>20 BMI.</p> <p>21 THE WITNESS: Yes. I'm an author.</p> <p>22 THE COURT: Publisher according to BMI.</p> <p>23 THE WITNESS: I own a publishing company as</p> <p>24 well.</p> <p>25 THE COURT: No, BMI.</p>	<p style="text-align: right;">Page 81</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Company period.</p> <p>3 A. Okay, I met Joe Bacal for the second time</p> <p>4 when he came to Michelin & Company to meet with Spence</p> <p>5 Michelin to have a meeting to discuss the music -- our</p> <p>6 music house working for his new company, Griffin Bacal.</p> <p>7 And I believe Sunbow was talked about that too.</p> <p>8 Q. Where did that meeting take place?</p> <p>9 A. At Michelin Company offices, 41 West 56th</p> <p>10 Street.</p> <p>11 Q. Now, which of the compositions at issue in</p> <p>12 this case have anything to do with Michelin & Company?</p> <p>13 A. Great Space Coaster was their first Sunbow</p> <p>14 production, and I wrote the music for that.</p> <p>15 MR. TANNENBAUM: I object, your Honor. That</p> <p>16 is not in the complaint. Not in the complaint.</p> <p>17 MR. MONAGHAN: The Great -- this is one of</p> <p>18 the points that was made earlier, your Honor,</p> <p>19 about documents that had just been produced over</p> <p>20 the weekend, over the last five days showing that</p> <p>21 The Great Space Coaster --</p> <p>22 THE COURT: Counsel, what you said was that</p> <p>23 you would limit your proof in this case to</p> <p>24 whatever was in the complaint. Plus, as you said,</p> <p>25 anything that was in any of the decisions of the</p>

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 2 Court.
 3 Is this in any of the decisions of the Court
 4 or the complaint?
 5 MR. MONAGHAN: The Great Space Coaster is
 6 not mentioned.
 7 THE COURT: Then it is not in. Let's go
 8 ahead.
 9 MR. MONAGHAN: Okay. And this was --
 10 incidentally, this is just background
 11 information --
 12 THE COURT: All right.
 13 MR. MONAGHAN: -- at this point.
 14 BY MR. MONAGHAN:
 15 Q. All right. And what other compositions
 16 which are at issue in this case?
 17 A. GI Joe, the jingle theme. Ford Kinder wrote
 18 that. And, My Little Pony -- the original My Little
 19 Pony melody.
 20 Q. And what was your involvement with My Little
 21 Pony?
 22 A. Well, with both of those, I may have done
 23 the arrangements. I usually did most of the
 24 arrangements. I was a well-known arranger, so I did
 25 the arrangements in Michelin & Company. It was

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 2 orchestra days. Co-produced it with Spence and/or
 3 Ford. I don't remember what I did for sure.
 4 MR. TANNENBAUM: I object on the ground of
 5 relevance. She just testified she didn't write GI
 6 Joe.
 7 THE COURT: Well, she didn't write this.
 8 She said she co-produced it.
 9 THE WITNESS: And arranged it.
 10 THE COURT: And arranged it.
 11 Tell me about arranging; how does this come
 12 into this lawsuit?
 13 MR. MONAGHAN: Well, GI Joe, as the witness
 14 has already testified, she received the rights to
 15 GI Joe by virtue of a settlement in this
 16 courthouse. The witness already testified, laid a
 17 foundation, that she received the performance
 18 royalties from GI Joe which are supposed to be in
 19 her catalog. That is part of her case. It is in
 20 the pleadings. The Defendants know about this.
 21 And these are not legitimate objections. They can
 22 cover what they want on cross. They keep
 23 interrupting the direct. I am not going to be
 24 able to go through it.
 25 THE COURT: Go ahead.

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 2 MR. TANNENBAUM: She may claim she has some
 3 kind of agreement with Mr. Kinder. But, as far as
 4 I know, they never notified BMI, whatsoever, that
 5 payments for GI Joe are supposed to go to Kinder
 6 are supposed to go to her.
 7 MS. SAFFER: We have never received any
 8 notification of an assignment from Mr. Kinder to
 9 Miss Bryant.
 10 THE COURT: Okay, this is what the Plaintiff
 11 is saying right now. I tend to agree with
 12 Plaintiff's counsel that these things should be
 13 covered on cross.
 14 Go ahead.
 15 MR. MONAGHAN: Thank you, Judge.
 16 BY MR. MONAGHAN:
 17 Q. And the music for My Little Pony, who wrote
 18 that?
 19 A. Ford Kinder.
 20 Q. Okay.
 21 MR. TANNENBAUM: Just note my objection,
 22 your Honor.
 23 THE COURT: All right.
 24 MR. MONAGHAN: Incidentally, Judge, I just
 25 want to put on the record, I don't know if I did,

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 2 I think I did an objection to the participation at
 3 this late stage of BMI. I don't think it is
 4 proper. I think it is procedurally --
 5 THE COURT: I think I ruled you had three or
 6 four years to take them to arbitration. You
 7 didn't do it. They are a named Defendant. They
 8 obviously belong in this courtroom.
 9 MR. MONAGHAN: I just want to object.
 10 THE COURT: Objection is noted.
 11 MR. MONAGHAN: Okay. Thank you, Judge.
 12 THE COURT: Go ahead.
 13 Q. Miss Bryant, just so the Court and the rest
 14 of us who don't know much about this business
 15 understand, what is your understanding based on your
 16 experience of an evolution of a jingle? How does that
 17 come about? What is the normal process of a jingle
 18 being created for an ad campaign?
 19 MS. PHARES: Objection, relevance.
 20 THE COURT: I'll allow this.
 21 Go ahead.
 22 A. Well, we're given a call about writing a
 23 jingle from an ad agency. And the script comes over or
 24 we go over to meet with the agency and discuss the kind
 25 of music that they are looking for, what the audience

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1 is. Generalities really about what they want the music
2 to be. And sometimes they give us a lyric or sometimes
3 they give us a line and we write the lyric. It happens
4 a lot of different ways. Then usually it is a budget
5 given. It is made clear up front that this is a
6 competition. It is often made clear it is a
7 competition. Sometimes it is not. And that several
8 music houses are also going to take a try at writing
9 this until they find the one they like. You know, we
10 have to do a demo. Usually there is a demo fee of
11 about a thousand dollars. And then we go away and do
12 our demos and submit them, and they pick what they like
13 from our music house or another one, possibly.

Sometimes as many as ten or 15 songs. A
16 little crazy there for a while. A hundred, 200 songs
17 people were choosing from, and that is ridiculous. And
18 then the next stage is yea, we won, hopefully. Then it
19 is time to orchestrate, arrange and book the recording
20 session and give a budget. I always do budgets off the
21 top of my head, because I have a sense, an ability to
22 do that.

Then we would record the final. I would do
24 the arrangement. Conduct a date. Book the singers, of
25 course, and musicians to do that. And do the final mix

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2 and mastering and submit the final to the agency. And
3 then we also prepared all the union contracts and
4 payroll and waited to be reimbursed. Also given a fee.
5 That's about right.

Q. And this is the general practice?

A. Yeah.

Q. And compare that to the practice that was
9 utilized in this case with respect to anything you did
10 for Griffin-Bacal?

A. I think --

MS. PHARES: Objection.

MR. TANNENBAUM: I object to the form of the
14 question.

MS. PHARES: Griffin-Bacal is not a
16 Defendant in this case.

MR. MONAGHAN: Doesn't have to be. These
18 are the -- these are the jingles that are at issue
19 in the case.

MR. TANNENBAUM: There's no cause of action
21 for the jingles, your Honor. The jingles -- we
22 are talking about re-registrations. This is what
23 we constantly have to face here.

THE WITNESS: Same piece of music.

THE COURT: Let's have a little discussion

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2 about this. If it's registered in nineteen -- if
3 the jingles were registered in 1980, is there a
4 requirement that it be re-registered?

MR. MONAGHAN: Is there? No.

THE COURT: Okay, so then --

MS. SAFFER: Your Honor, the cause of action
8 has to do with the use of music in what we refer
9 to as cues, background music in television shows,
10 et cetera. We have a different system of
11 registering music for jingles for commercials than
12 we do for the background music in T.V. shows. It
13 may be a similar piece of music, it may be totally
14 different. It is a different possess.

THE COURT: Well, maybe I can short-circuit
16 this somewhat, I doubt it, but we now had a short
17 discussion, testimony by the witness about how
18 things normally worked in jingles. Now go on to
19 whatever your next point is, counselor.

Did something different happen?

MR. MONAGHAN: Well, that's what I asked
22 her.

THE COURT: Go to the point where in this
24 complaint or decision of mine are we dealing with
25 jingles?

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2 MR. MONAGHAN: Okay, I did. But I'll do it
3 again, if you don't mind, your Honor.

BY MR. MONAGHAN:

Q. Which of the compositions at issue in this
6 case are commercial jingles?

A. The Transformers was originally a jingle.
8 GI Joe and My Little Pony were originally jingles. And
9 Humanoids, Visionaries -- I'm not sure about
10 Visionaries. Robotics was originally a jingle. Only
11 about three or four of them that were original themes
12 that started this --

THE COURT: Hold on one second.

MS. PHARES: Your Honor, the complaint in
15 this case has to do with registrations of cues in
16 the 1990s, of the cues that were used in T.V.
17 productions produced by Sunbow. Jingles are not
18 part of the complaint in this case.

MR. MONAGHAN: Not true. Just flatly not
20 true.

THE WITNESS: Not true.

MR. TANNENBAUM: Where is the word "jingle"
22 in the complaint? Can you show us the word
23 "jingle" in the complaint?

THE COURT: Or in some decision where I

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extended your complaint.

MR. MONAGHAN: Your Honor, could we also perhaps get some guidance from the Court on how many different lawyers are going to jump up and down at what point and interrupt the exam? I mean, perhaps they are going to decide you'll take this objection and then I'll take that objection instead of --

THE COURT: Well, I wish it were that simple. I'm not going to curtail the right of a lawyer to defend their client. If the two of them jump up at the same time, the fastest one up is the first one. Except for the tall guy.

MR. TANNENBAUM: Gloria is smarter than I am so she may have more objections.

THE COURT: I want to get through this as reasonably as possible. And I thought we had come to an agreement that anything not in the complaint or not as you would say extended somehow by a decision is not for this Court. And they are complaining now that you are going into jingles and they say that is not in the complaint.

MR. MONAGHAN: Well, they are wrong.

THE COURT: Show me.

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MR. MONAGHAN: The jingles -- in the middle of my direct I have to run through the pleadings?

THE COURT: Objections have to be handled when they are made.

MR. MONAGHAN: All right, Judge.

THE COURT: There is no jury here.

MR. MONAGHAN: No, I understand that.

THE COURT: I'm not worried.

MR. MONAGHAN: I'm not either. But I think -- just think it is unfair to force me to go through the pleadings right now and pick this out in the middle of my direct of this witness. But I'll do that. But I need a minute.

THE COURT: I appreciate that.

MR. MONAGHAN: You also answered interrogatories. And we've also used the word "compositions" throughout the pleadings. And the compositions include the songs and the music we are talking about. Paragraph 9 of the complaint, the verified complaint, which initially had BMI talks about Bryant and Kinder to being in the jingle business dealing with ad agencies such as BMI.

MS. PHARES: The verified complaint is not

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the complaint at issue.

MR. MONAGHAN: Excuse me, I'm answering questions from the Court. When I'm done --

THE COURT: Go ahead, counsel.

MR. MONAGHAN: Throughout the entire course of the litigation, in depositions and answers to interrogatories, that has been the way these songs have been characterized. They were -- and the witness just testified, they were done as jingles for toys with the exception of the three compositions she talked about. She's testified on direct and so far without rebuttal, except from lawyers jumping up and down, that these were done as jingles for toys, for HASBRO Toys, Transformers, GI Joe. And the other toys she talked about, including Paragraph 14, which talks about the music for the client HASBRO which marketed toy products, including Transformers, My Little Pony, JEM and GI Joe.

And that's exactly what they want the Court to believe. They want the Court to believe that these were -- this music was done for T.V. productions, therefore, they could use a cue sheet. That's the essence of the case. And it

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has been in the rulings. I believe you discussed that, your Honor, in prior rulings. We say you can't use a cue sheet if the music was not done for a T.V. production.

MS. SAFFER: I stood up last, but I'm littlest.

THE COURT: All right, counsel, I have seen in your complaint that you mentioned GI Joe is mentioned, several of the items that have been classified as jingles are mentioned in there by name, and -- but if Miss Saffer --

MS. SAFFER: Yes.

THE COURT: -- has something to add to this, I'm willing to listen.

MS. SAFFER: I'm not going to contest whether or not a particular melody was written for a jingle or a theme or a song. The practice in the industry is depending upon the use of the music no matter what it was originally thought of in the composer's mind. It is registered differently because it receives different kinds of payments. If something is registered as a jingle it is paid when it appears in a commercial on T.V. If it is registered as a cue, that means that it

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is part of the background music, the theme or background scoring on a television show. And if, for example, it is a song, it's registered as a song and paid that way. If you think, for example, of something in today's world, Friends, the theme of Friends became a popular song. It is registered at BMI as a theme from the T.V. show and it's registered as a song. So that if it's sung by somebody on the radio or in another show somebody sings it, the composer and the publisher can be paid for the use of that song.

Frankly, there are different amounts of money that we pay for different kind of uses. A song we view as being more, if I can use the word, "important", I was going to say maybe that's not the right word, is more valuable, it brings in more revenue and, therefore, we pay it more money.

So the issue here is Miss Bryant can write a particular melody that can be -- that same melody can be registered at BMI three times, three different ways, if it's going to be used three different ways.

THE COURT: All right, hold on a second. You need a lawyer to ask you questions. This is

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the last I'm going to take on this issue.

MS. PHARES: Your Honor, also, Griffin-Bacal was a company that was in the jingle business, and Miss Bryant worked for Griffin-Bacal through her own company. But Griffin-Bacal is not a Defendant in this case. The only Defendant -- and I don't believe it was ever served, the only Defendant in this case that involves any of the use of Miss Bryant's work is Sunbow. And for Sunbow she was writing music for television series. Jingles are not relevant to what is pled in this complaint and certainly not in the amended complaint against Sunbow.

THE COURT: Well, any of the items that are in there that have been designated by name that are jingles, they are in this lawsuit.

MR. TANNENBAUM: Except they were registered as jingles in the 1980s.

MS. PHARES: In the 1980s.

MR. MONAGHAN: We'll change them is the issue.

MS. PHARES: There is no change.

THE COURT: Hold on. Hold on. If you want to sum up let's just go straight out -- ladies and

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gentlemen, you know, I realize that you all have to educate me as we are going along, as opposed to a jury, but at least I have the background of having read these. I can't say I know as much about it as you do, I don't, but I do want to let the Plaintiff put in his case, and I don't like an excessive amount of interfering with Plaintiff or anybody putting in their case. So let's try to keep the objections down. At least for the present I'm going to allow now the witness on the stand to -- who has given us the background of how she makes jingles operate, tell us if counsel wants to ask her what any of the named Defendants in here did to her jingles, if anything.

MR. MONAGHAN: We'll get to that, your Honor, if I may.

MR. TANNENBAUM: Just so we don't interrupt the flow, can we have a continuing objection?

THE COURT: You may have a continuing objection throughout the entire trial.

MR. TANNENBAUM: Thank you.

MS. PHARES: And, your Honor, if to the extent now Miss Bryant is going to say that those songs in the Sunbow works were derivative works,

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we are again right back squarely right in the middle of a copyright case.

THE COURT: No, we're not squarely in the middle of it. We are going forward. This trial will end. All wars end, even the Trojan War. This war will end soon.

Go ahead.

MR. MONAGHAN: Thank you.

THE WITNESS: I wish I got to talk.

THE COURT: Go ahead. Question.

BY MR. MONAGHAN:

Q. Okay. Where were you between the years 1983 and 1989 in terms of your employment, Miss Bryant?

A. 1983 and -- you left out a couple of years, but, okay.

Q. I'm mindful of the Judge's admonition to get to the meat.

A. 1981 to 1983 Kinder & Bryant music. 1983 to about 1990 --

Q. When you were at Anne Bryant Music, were any of the compositions at issue in this case composed?

A. No.

Q. And, okay, Kinder-Bryant 1983 to 1989, which of the compositions in this case, if any, were composed

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 2 during that period of your involvement?
 3 A. All of them were either composed or
 4 developed further. My Little Pony was Michelin Company
 5 and was developed further at Kinder & Bryant. GI Joe
 6 the same. Except for Great Space Coaster.
 7 Q. Okay. Now, who is Mr. Kinder?
 8 A. Ford Kinder is a composer. Right now he is
 9 a medical doctor practicing in Florida.
 10 Q. He is one of the witnesses we've listed?
 11 A. (Nodding in the affirmative).
 12 Q. You have to answer verbally, by the way?
 13 A. Yes.
 14 And he's a composer, an arranger, a singer,
 15 a wonderful singer, a businessman. Grew up in the
 16 music business in Atlanta.
 17 Q. Okay.
 18 A. He was my partner 50/50.
 19 Q. Who were some of the clients you had at
 20 Kinder-Bryant?
 21 A. We worked for a lot of agencies. In the
 22 beginning we worked at Saatchi & Saatchi. We did
 23 Dunkin' Hines music. And Dannon music. And High Point
 24 Coffee. A lot of the major brands. We worked for
 25 Ogilvy & Mader. I forget what we did for them. And we

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
 2 worked for Leo Barnett in Chicago. Some of my clients
 3 doing Kellogg's and some of their major brands. Also
 4 Needer, Harper & Speers in Chicago. Jay Walter Toms.
 5 Q. We may have touched upon this, when did you
 6 first meet Mr. Bacal?
 7 A. I first met Joe Bacal in 1976 when I was
 8 doing arrangements for Jinny Reddington, who is a
 9 wonderful songwriter. At that time he was still at
 10 Bowls. He was a creative director for HASBRO then.
 11 Q. What were the circumstances? Why did you
 12 have occasion to meet with him?
 13 A. He came to the recording session. That's
 14 when I met with him. And, after that, I met him again
 15 several years later. Maybe 1978. Actually, a couple
 16 of years later, at Michelin & Company, when he came to
 17 discuss Michelin & Company working for his new ad
 18 agency.
 19 Q. Do you remember any conversations you had
 20 with him that long ago? I know it is difficult.
 21 A. Not really. I remember Spence Michelin
 22 called me upstairs to his office and said I want you to
 23 talk to Joe Bacal. And he vaguely remembered me. And
 24 I remember meeting him. And we talked a little bit
 25 about music and arrangements and what-not.

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 2 Q. Tell the Court, please, about the
 3 Transformers, that particular song. What is your
 4 involvement with that music?
 5 A. Well, I composed it in 1983. Late August,
 6 as it turned out, in '83.
 7 Q. And how did that come about?
 8 A. Kinder-Bryant was two months old and Ford
 9 very much wanted to work for Joe and HASBRO. Called
 10 him a lot. It was summertime, nobody was around, you
 11 know. And at the end of August Joe called saying I got
 12 a job for you. New toy, great new toy called
 13 Transformers. He called Ford, but we had an office
 14 that was a huge room, and Ford was at one end and I was
 15 at the other end. He was going, Joe Bacal was on the
 16 phone, he really wanted to work for Joe, he loved Joe
 17 so much. And so he hung up and said, you know, Joe
 18 called and explained the job to me, the Transformers
 19 and Joe said same deal as Michelin Company. We were a
 20 new music house.
 21 MR. TANNENBAUM: Objection, your Honor.
 22 She's testifying to conversations between Mr.
 23 Bacal and Mr. Kinder.
 24 THE WITNESS: Ford Kinder told me that.
 25 THE COURT: That's why it is hearsay.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
 2 Q. What was your understanding of the
 3 arrangement at Michelin & Co.?
 4 A. I knew the arrangement we worked under it --
 5 MR. TANNENBAUM: Objection.
 6 MR. MONAGHAN: This is a witness who knows
 7 it personally.
 8 THE COURT: I said it was all right.
 9 MR. MONAGHAN: I'm sorry, Judge, I was used
 10 to getting hammered on it.
 11 THE COURT: I think you've done all right so
 12 far. Go ahead.
 13 A. We wrote the music for them and we were
 14 given 100 percent of the writer's share of the
 15 royalties with Griffin-Bacal, as I am with all my
 16 advertising clients. 100 percent of the writer's
 17 share.
 18 Q. What does that mean? Tell the Judge what
 19 that means, the writer's share; what is that?
 20 A. There is publishing and writing equal
 21 amount, 50/50 or 100 and 100. 100 percent of the
 22 publishing, 100 percent of the writing. And the
 23 writers keep the writer's share -- or, in the jingle
 24 business they do. And the publishers keep the
 25 publisher's share. Sometimes when a writer gets lucky

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 2 they get a little bit of the publishing too.
 3 Q. And what does the publisher do?
 4 A. The publisher basically causes a piece of
 5 music to be performed. I mean, that's the simplest
 6 definition of what -- and they work the song, I guess.
 7 That's a publisher. And they also do -- they are
 8 responsible for accountings and administration.
 9 Q. What involvement does the publisher have,
 10 for example, with licensing of the music?
 11 A. They issue licenses.
 12 Q. Okay. What about monitoring the payments
 13 for the licenses?
 14 A. They receive the payments for the licenses.
 15 But not in the case of BMI. They receive their check,
 16 BMI, and the writer receives a separate check.
 17 Q. Okay. And what about determining what uses
 18 would be made of the music? Who makes that decision as
 19 between the writer and the publisher?
 20 A. The publisher makes that decision if the
 21 publisher is a copyright owner, or the publisher maybe
 22 is an agent for a copyright owner. The writer doesn't
 23 have any say in that.
 24 Q. And under what circumstances would you as a
 25 writer have given up your writer's royalties through

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 2 songs that you composed?
 3 A. I never give up my writer's royalties.
 4 Q. Can you cite a single instance in your
 5 career where you ever gave up your writer's royalties?
 6 A. No.
 7 Q. Okay. Have you seen any document in this
 8 case in all the four years of this litigation where you
 9 signed off on your writer's royalties?
 10 A. No.
 11 MS. SAFFER: Your Honor, I wish to object,
 12 unless it is made clear that what the witness is
 13 testifying to is her understanding, if you will,
 14 of what has transpired, as opposed to a definitive
 15 statement that this is in fact what has
 16 transpired.
 17 In other words, with all due respect to Miss
 18 Bryant, she is not an employee of a performing
 19 arts organization. She doesn't have an expertise
 20 in that area. There will be witnesses who do.
 21 There will be other witnesses maybe also brought
 22 by the Plaintiff. And I just want the record to
 23 indicate that what she is testifying to is her
 24 understanding, but is not a fact.
 25 THE COURT: What you are saying is there are

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 2 ways that a person could lose or have their rights
 3 expire other than a written document?
 4 MS. SAFFER: Among other things, your Honor,
 5 yes.
 6 THE COURT: All right, I think that was in a
 7 couple of the motions.
 8 MS. SAFFER: Yes.
 9 THE COURT: All right, let's go ahead.
 10 Q. Okay, you have to answer questions.
 11 Let's get back to the Transformers. Let's
 12 get a timeframe now, please, again.
 13 A. 1983, September.
 14 Q. 1983?
 15 A. I found it the other day. September 1st,
 16 1983 was the day we recorded that, National Edison
 17 Studios in New York.
 18 Q. Recorded Transformers?
 19 A. The Transformers jingle theme.
 20 Q. Are you talking about a demo? Are you
 21 talking about the final version? What are you talking
 22 about?
 23 A. We did a piano demo first. We always did
 24 that with Joe Bacal. And actually he came over to our
 25 office and listened to the different songs in person

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 2 which he did sometimes, you know, he came over to us.
 3 Q. Let's just stick with the Transformers.
 4 A. On that day he did. That was Transformers.
 5 I remember he did. And he picked -- I think we did a
 6 demo on more than one. But he clearly picked the one I
 7 did. It was an unusual jingle.
 8 Q. Have you got with you on the stand something
 9 that would play the music of the Transformers?
 10 A. Yes. I'll take this out. I've got it on my
 11 phone. You can get this all around the world.
 12 MR. MONAGHAN: We're going to play this
 13 again, Judge, but this is just to show you a
 14 general idea what the music is like.
 15 THE COURT: This also goes to the question
 16 that somehow or another the Transformers ended up
 17 on cell-phone.
 18 MR. MONAGHAN: Correct.
 19 THE WITNESS: Yeah, it's everywhere.
 20 (Music played)
 21 THE WITNESS: The whole song, the bridge and
 22 everything.
 23 Anyway, it keeps going. Sounds kind of
 24 silly.
 25 BY MR. MONAGHAN:

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2 Q. How did you get that music in your phone?

3 A. I downloaded it onto my phone and I got

4 some -- maybe because I bought the Transformers movie,

5 they were marketing the daylights out of me, and I got

6 a notification that now you can get free Transformers

7 ring tones from Nokia. Or you can get it from

8 Mini-Ring Tones. I Googled them and found you can get

9 lots of ring tones from the Transformers theme.

10 THE COURT: You have an objection?

11 MS. PHARES: Objection, your Honor.

12 Relevance.

13 And, furthermore, there is no foundation for

14 Miss Bryant's testimony about ring tones. For all

15 we know, these ring tones are all unauthorized.

16 Frankly, I don't think any of us knows.

17 THE COURT: No special reason except she is

18 playing it on her phone.

19 MS. PHARES: I understand that, but we are

20 now also moving far away from the area of

21 performance royalties because her ring tone does

22 not involve public performance royalties.

23 THE WITNESS: Yes, it does. I get royalties

24 for it.

25 THE COURT: Just a minute.

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2 That's really cross-examination.

3 THE WITNESS: I get royalties for it.

4 THE COURT: Go ahead.

5 Q. Who composed the music the Court just heard?

6 A. I did.

7 Q. And is this the music you were talking about

8 a moment ago?

9 A. Yes.

10 Q. Is this the music you composed pursuant to

11 the overture from Joe Bacal's agency?

12 A. Yes.

13 MR. TANNENBAUM: Objection to the form. Not

14 Joe Bacal's agency. It was a corporation.

15 THE COURT: Sustained.

16 MR. TANNENBAUM: Thank you.

17 Q. And were there lyrics to the Transformers?

18 A. Yes.

19 Q. Okay. And let me back up a little bit.

20 For what purpose was the Transformers music

21 composed? What commercial purpose?

22 A. It was to create a theme for this toy,

23 interesting toy, that was coming out.

24 Q. And at that point in time what T.V.

25 productions were contemplated with respect to the

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2 Transformers at that time that you composed the music?

3 MR. TANNENBAUM: Objection to the form.

4 MS. PHARES: Objection.

5 MR. TANNENBAUM: Played by whom?

6 THE COURT: Sustained.

7 Find a different word.

8 Q. What was your understanding at the time of

9 the composition of that music by you as to its use, its

10 intended use at that time?

11 A. Well, nothing specific. But, you know, we

12 always had the hope that these things would turn into

13 T.V. shows, but we didn't know that at that point.

14 Q. It was a toy jingle?

15 A. Yeah, it was a toy jingle first. It had to

16 be a toy jingle, yeah.

17 Q. What did Sunbow have to do with this?

18 A. Nothing, at that point.

19 Q. Did the name Sunbow even come up at that

20 point?

21 A. Not in the discussions on the Transformers.

22 We knew about Sunbow. We worked for them, you know, in

23 other ways.

24 Q. The Great Space Coaster?

25 A. Yeah.

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2 Q. All right. Now, I'm going to show the

3 witness --

4 MR. MONAGHAN: I'm going to ask the reporter

5 to mark this as Exhibit 2.

6 THE COURT: State what it is, for the

7 record.

8 MR. MONAGHAN: Yes, your Honor. It is Miss

9 Bryant's BMI catalog dated April -- I'm sorry,

10 March 16th 2000. It is Bate Stamp Numbered 574

11 through 658.

12 The Defendants have copies of this --

13 THE COURT: Just off the record a moment.

14 (Discussion off the Record)

15 (Resumed on the record, in open court)

16 THE COURT: Let's go.

17 MR. MONAGHAN: All right, thanks.

18 (Plaintiff's Exhibit No. 2, Ms. Bryant's BMI

19 Catalog dated March 16, 2000, Bate Stamp Numbered

20 574 through 658, marked for identification)

21 THE COURT: It's been marked for

22 identification.

23 Any objection to it?

24 MS. PHARES: I have not seen it.

25 MR. TANNENBAUM: We have not seen it.

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THE COURT: Show it to counsel.

THE WITNESS: It says Exhibit 2.

MR. TANNENBAUM: We have not gone through every page, your Honor, but with the right to reserve an objection if something pops up, we do believe that was the catalog that was provided to BMI.

THE COURT: And that this catalog would at least theoretically contain all of the musical jingle, songs, cues?

MS. SAFFER: I'm not prepared to say that, your Honor. It is a possibility that it does not contain the jingles. I don't know, because of the date.

THE COURT: All right, thank you.

It's admitted into evidence.

MR. MONAGHAN: Thank you, Judge.

(Plaintiff's Exhibit No. 2, marked and received in evidence)

MR. MONAGHAN: If I may, Judge, we do have equipment, it is not set up, and I don't want to take the time to do that, but probably tomorrow morning where we'll go through the DVDs and the CDs and all the music.

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THE COURT: All right, let me get this straight, it's a good thing we don't have a jury here, we have now established that the Plaintiff composed, originated some music that was later called Transformers; is that right?

MR. MONAGHAN: At the time it was called Transformers.

THE COURT: At the time.

MR. MONAGHAN: At the time, because the toy --

THE COURT: Is that Transformers listed in the catalog?

MR. MONAGHAN: Yes, in a variety of ways.

THE COURT: Okay. Then somebody is going --

I mean, believe me, I know about NAPSTER and those things. Even I know about it. How does it then get to be on the telephone?

MS. SAFFER: Well --

MR. MONAGHAN: Very good question.

MS. SAFFER: Okay, your Honor, there are many different ways it gets to be on the telephone. Some of them authorized, some of them not. Just like the NAPSTER situation where NAPSTER was not authorized. But there are

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services where you can legally download. Ring Tones is a relatively new use of music. There are companies that are coming to BMI and other performing rights organizations and getting licenses. To that extent, we then pay royalties. Granted, not great amounts of money, pennies, but we pay royalties to the people who are listed as the writers and publishers of the music in our records.

I have no way of knowing, sitting here, whether what Miss Bryant downloaded was from one of those authorized people who got permission or not.

THE COURT: I understand. I understand.

Okay, let's go forward.

MR. MONAGHAN: Thank you, Judge.

THE WITNESS: I do that legitimately. I'm a composer.

BY MR. MONAGHAN:

Q. Miss Bryant, to finish the thought about the ring tones on your phone, just tell the Judge how you got that into your telephone.

A. I downloaded it from Get It Now on the web from a legitimate site that I checked out on Google

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called Mini-Ring Tones that pays royalties and has legitimate licenses. I don't pirate anything.

THE COURT: All right, let's continue.

A. So, you know --

THE COURT: I think the search for Transformers is something we'll keep going here rather than get into anything else.

MR. MONAGHAN: That's what we are on, your Honor, we are on Transformers.

Q. Miss Bryant, just --

A. Looking for it.

Q. -- if I can direct your attention to Page 4.

A. Page 4. Oh, Transformers. Oh, right, cues.

MR. TANNENBAUM: Just so I understand, when you say Page 4 you mean the number on the top, right?

MR. MONAGHAN: I do.

Is that one we furnished you?

MR. TANNENBAUM: No.

Q. Just a couple of foundational questions.

This is your BMI catalog?

A. Yes, it is. It is old.

Q. How did you get it?

A. I tried for two years to get this. Then I

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called you. And you went to work on my behalf.

Q. When you say you tried for two years, what efforts did you make?

A. I wrote letters, made phone calls to BMI asking them to investigate missing titles for -- from my catalog and investigate things that seemed to be registered strangely. And I got sent around to several people. And then I wrote several letters with cover copies. I did it, right, you know, to try to determine what was going on.

Q. When did you start that process?

A. Spring of 1998.

Q. And how did you start it? Was it with a call?

A. Started with a phone call.

Q. Who did you call?

A. I called the Writer Relations Department, and then I was told to speak to Greg Bob's office.

Q. Writer's Relations Department at BMI?

A. Yeah. And I don't know what his title was. So I called this number that they gave me, Greg Bob's office, and I spoke to his assistant Lisa Turner. And Lisa Turner -- when I called, I told her the problem. I said, I don't see GI Joe and I don't see My Little

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and the Transformers came up with lots of different people being credited with writing it and me having participation in some and not others. I said, what is going on here?

Q. Why didn't you have a catalog before this time, a BMI catalog of your songs?

A. Well, I didn't know there was anything wrong. I remember, years ago, I called for a catalog, and I said can I get a copy of my catalog? That is when Ford and I split up. I want to have a copy of my catalog. It was at the house in two days. Somebody ran it for me. I have it somewhere. And everything was fine.

Q. So, okay, let's back up a little bit, short cut this a little bit.

What information would you -- prior to this exercise in trying to get the catalog, what information would you get from BMI by way of writing statements, that type of thing?

A. Well, it used to be that you could see your feature songs, next to it it would say your percentage. A hundred percent.

Q. What would say that? What piece of paper?

A. The statements.

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Pony. She said, let me just go into the computer.

Q. Stop there.

A. Yes.

Q. When you say you don't see it, what are you talking about?

A. Oh, I found this all on the web quite by accident. I wasn't looking for it.

Q. What did you find on the web?

A. I typed my name in on the new BMI site to see if I was in the site. My catalog was there.

Q. Was there any reason that prompted you to do that?

A. Yes. Joey Cummings from the Joey Company asked me to try to find out publisher information for Jim Croce on one of his songs called Feelings. And I did. I thought it was very exciting. Here his whole catalog came up, everything is underlined in blue. I said, wait a minute, I'm in BMI, maybe I'm in there. I typed my name, my catalog came up. It was all wonderful. Until I got to G. I said good, where is GI Joe? I went to down to J. JEM was there. I went to My Little Pony. That was missing. I got down to the Transformers and I clicked on the blue and the underscoring, you know, I wasn't as much a geek then,

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Q. I'll show you some of those later.

A. Okay. A number of performances credited to you and then an amount.

Q. These are the public performances that generate the money?

A. These were on feature songs and jingles had payments, I think it was once a year, in January. Maybe it was twice a year. That kind of fell under that category. And you would see your percentage there too. The Transformers, actually, Robots In Disguise, 100 percent. And that was the way it was listed. The way it was born.

Q. And so in 1998 you said you commenced the process of trying to get a copy of your catalog as it existed at that time?

A. Yeah.

Q. And --

A. To find out what was going on, you know.

Q. Okay. And you contacted -- what did you say? Artist Rights Section?

A. The Writer Relations.

Q. Writer Relations, okay.

And do you remember the names of anybody else you spoke with?

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A. I spoke to Lisa Turner. And she typed my name. She said, well, let me just take a look. She typed my name in the computer and she said, oh, my God, there's a writer's change here. We never see that. And, you don't know about this? And I said, no, I don't know anything about it.

MS. SAFFER: Excuse me, your Honor.

Objection.

MR. TANNENBAUM: Objection with respect to my client. That is hearsay.

MS. SAFFER: And with respect to my client that is hearsay too.

MS. PHARES: With respect to all Defendants.

MR. MONAGHAN: BMI has asked to participate in the case.

MS. SAFFER: Yes, but she's testifying as to what somebody else was saying.

MR. MONAGHAN: Somebody at BMI.

THE WITNESS: I put in a letter, you know, to Charlie Feldman --

THE COURT: I'll let it in for limited purposes. This isn't a jury trial. I know the difference.

Go ahead.

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Q. And what other efforts besides telephone calls did you make?

A. Well, she said you should call -- you need to get in touch with Charles Feldman. Charlie Feldman who I think is in the legal department. Used to be.

Q. Did you have any contact with him?

A. I called his office, and his assistant Maggie told me that you need to write a letter to Mr. Feldman and include some copies showing, you know, past registrations of these particular themes that you are concerned about. Ask him what to do. That's how this all began. I was trying to find out what happened.

Q. Why didn't you get your catalog for two years?

A. I don't know. Everybody gave me the dodge at BMI. I loved BMI. They were always very helpful. If you had a question they would always answer it. All of a sudden, nobody wanted to know anybody.

Q. How many letters did you write?

A. I wrote to Mr. Feldman two or three times. Then I spoke to him and he blew me off. And then I was about to give up on the whole thing. It went over a period of a year. And I went to a party and I met

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somebody who worked at BMI and I said, you know, I have this problem, it is not like BMI to be this way. They said call Mr. Marcilio.

THE COURT: Do you have an objection?

MS. SAFFER: Yes, I'm objecting. I really don't understand the relevance. It may be relevant whether or not there was something that was done to change the records or whatever. But every conversation she had with everybody in various implications about BMI changing from being nice to not nice, I really don't think it has anything to do with the issues in the case.

THE COURT: Well, maybe we could get away from the plot theory and get to what happened next.

MR. MONAGHAN: Okay, Judge. Thanks.

A. So Kathy King told me to contact John Marcilio, who I -- I sent him an E-mail, who also worked there. She said he'll -- he can really help you with this and help you get the answers.

Q. How did you eventually get the catalog?

A. When you got it for me. That was two years.

Q. Is this the catalog?

A. Yes.

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Q. Did BMI -- strike that.

What reason did BMI give you for not providing that catalog for that period of time?

A. I don't think they ever gave me a reason.

Q. You are the writer, this is your catalog, and it took you two years to get it?

A. Yeah.

MS. SAFFER: Objection, your Honor.

THE COURT: Sustained. I think we got the picture here.

Q. All right. Let's go, if we can -- I think we started at Page 4 of the catalog?

A. Uh-huh.

Q. Exhibit -- what is it? 2?

THE COURT: You have to say yes or no.

A. Yes.

THE WITNESS: I thought he was talking to you.

Q. Referring to the Transformers. We're going the stick with the Transformers for a little while.

A. Yes.

Q. Okay. Does the Transformers composition appear on Page 4?

A. Well, Autobots Go Into Battle.

<p style="text-align: right;">Page 122</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: Judge, we have another copy</p> <p>3 of this if you want to follow along.</p> <p>4 MR. TANNENBAUM: We would really like you</p> <p>5 to, your Honor.</p> <p>6 MR. MONAGHAN: You would really like.</p> <p>7 Swell.</p> <p>8 MR. TANNENBAUM: Okay, I have no objection</p> <p>9 to this.</p> <p>10 THE COURT: My grandchildren listen to this.</p> <p>11 I'm very familiar with it.</p> <p>12 Go ahead.</p> <p>13 MR. MONAGHAN: This is Page 4, your Honor.</p> <p>14 THE COURT: Yes.</p> <p>15 Q. Autobots Go Into Battle.</p> <p>16 Incidentally, what is your understanding of</p> <p>17 the information that's supposed to be provided by the</p> <p>18 catalog?</p> <p>19 A. There's a writer and publisher print</p> <p>20 information.</p> <p>21 Q. Okay.</p> <p>22 A. You could see we have writer I.D.s and our</p> <p>23 affiliations. ASCAP. And our shares.</p> <p>24 Q. Okay. So we see, for example, that with</p> <p>25 Autobots Go Into Battle this is a total percentage</p>	<p style="text-align: right;">Page 124</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. Right.</p> <p>3 Q. ASCAP is another Performing Rights Society?</p> <p>4 A. Yes.</p> <p>5 Q. Under what circumstances would a writer such</p> <p>6 as yourself select one or the other of these Performing</p> <p>7 Rights Societies, ASCAP versus BMI?</p> <p>8 A. Well, I like BMI better.</p> <p>9 Q. Well, what is the criteria for deciding?</p> <p>10 MS. PHARES: The objection was relevance.</p> <p>11 THE COURT: Well, I'm going to allow it</p> <p>12 because we're trying to track down the</p> <p>13 Transformers mystery right now.</p> <p>14 Go ahead.</p> <p>15 Q. Can you answer that?</p> <p>16 A. Why do I like them better?</p> <p>17 Q. Why did you like BMI better?</p> <p>18 A. I met Mr. Catron.</p> <p>19 THE COURT: Okay, not going any further.</p> <p>20 This is irrelevant.</p> <p>21 MR. MONAGHAN: It wasn't exactly --</p> <p>22 A. They were very helpful.</p> <p>23 MR. MONAGHAN: It wasn't where I was going</p> <p>24 actually at all.</p> <p>25 THE COURT: Let's go.</p>
<p style="text-align: right;">Page 123</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 shown there of 200 percent, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And the first column where it says,</p> <p>5 "participant", that is the writer --</p> <p>6 A. Yes.</p> <p>7 Q. -- or the publisher, as the case may be?</p> <p>8 A. The writers seem to be always listed first.</p> <p>9 Q. Okay, but that column will identify the</p> <p>10 writer or the publisher with respect to the</p> <p>11 composition?</p> <p>12 A. That's right.</p> <p>13 MR. TANNENBAUM: We'll stipulate that "P"</p> <p>14 means publishing and "W" means writer, your Honor.</p> <p>15 THE COURT: All right.</p> <p>16 Q. And then there is some information under the</p> <p>17 column, account number; what is that?</p> <p>18 A. That is my account. 44388.</p> <p>19 Q. And then there is P/W, and counsel was</p> <p>20 generous in stipulating to publishers and writers.</p> <p>21 And then next is a column headed A-F-F-I-L.</p> <p>22 I assume that is affiliation?</p> <p>23 A. Yes.</p> <p>24 Q. That means whether you are a BMI writer or</p> <p>25 ASCAP?</p>	<p style="text-align: right;">Page 125</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. All right, number four.</p> <p>3 A. I'm sorry?</p> <p>4 Q. What is that song, Autobots Going Into</p> <p>5 Battle?</p> <p>6 A. It is the Transformers melody. It is a cue.</p> <p>7 Q. The melody we just heard, is it the same</p> <p>8 melody?</p> <p>9 A. Yeah.</p> <p>10 Q. When you say it is a cue, what does that</p> <p>11 mean in the parlance of the trade?</p> <p>12 A. It means it is background, it is</p> <p>13 orchestration, it is behind the scene, of music. It is</p> <p>14 a cue, a film cue.</p> <p>15 Q. Does that mean there would not be lyrics?</p> <p>16 A. No lyric.</p> <p>17 Q. If it is a cue there is no lyrics?</p> <p>18 A. No lyric.</p> <p>19 Q. You have to answer verbally. I see you</p> <p>20 shaking your head. I want you to acknowledge.</p> <p>21 Okay. Now, with respect to Autobots Go Into</p> <p>22 Battle, is there anything wrong with that registration</p> <p>23 in your understanding as to your participation and the</p> <p>24 participation of others in that composition?</p> <p>25 Is there anything wrong with the way it is</p>

<p style="text-align: right;">Page 126</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 registered?</p> <p>3 A. Well, Ford Kinder shouldn't be there. I</p> <p>4 wrote this song, and it is 100 percent mine, and the</p> <p>5 writer's royalty.</p> <p>6 Q. Now --</p> <p>7 MR. TANNENBAUM: Objection, your Honor.</p> <p>8 This is where we are. It's an unjust enrichment</p> <p>9 claim against Joe Bacal. You have her catalog.</p> <p>10 50 percent Anne Bryant, 50 percent Ford Kinder.</p> <p>11 Nada for Joe Bacal. This is entirely irrelevant.</p> <p>12 Bacal is not getting anything on this composition.</p> <p>13 This was my case. She's putting in my case. It</p> <p>14 is not there. He doesn't get anything. If</p> <p>15 somehow by some mysterious way somebody schemed to</p> <p>16 change and give money to Ford Kinder that Kinder</p> <p>17 is not supposed to get, she sued Kinder, that is</p> <p>18 Kinder's case. This is where we are. There are</p> <p>19 20 straight examples of this and we are going to</p> <p>20 sit here and do this.</p> <p>21 THE COURT: Well, unless somebody finds a</p> <p>22 different way we're going to sit and do this.</p> <p>23 MR. TANNENBAUM: I object to relevance.</p> <p>24 THE COURT: As to some of the Defendants in</p> <p>25 this lawsuit I'm going to allow it in.</p>	<p style="text-align: right;">Page 128</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 anything to do with Sunbow.</p> <p>3 THE COURT: I assume that everybody at that</p> <p>4 back table is against everything that they are</p> <p>5 hearing from the Plaintiff.</p> <p>6 MS. SAFFER: Except when she says BMI was</p> <p>7 very cooperative.</p> <p>8 MR. MONAGHAN: And nice.</p> <p>9 THE COURT: Let's go ahead.</p> <p>10 MR. MONAGHAN: All right, Judge.</p> <p>11 THE COURT: We're going to take a break at</p> <p>12 3:15.</p> <p>13 MR. MONAGHAN: Thank you, Judge.</p> <p>14 DIRECT EXAMINATION BY</p> <p>15 MR. MONAGHAN: (Continued)</p> <p>16 A. Can I finish? You asked me a question.</p> <p>17 Q. Yes, go ahead.</p> <p>18 A. The other way -- I mean, the other thing</p> <p>19 that I see on here is that somebody registered this</p> <p>20 apparently by cue sheet and it was the administrator</p> <p>21 for Sunbow. They were -- they have Starwild and</p> <p>22 Wildstar Music.</p> <p>23 Another thing I see on here is why is</p> <p>24 Wildstar Music listed with two BMI writers? Wildstar</p> <p>25 is an ASCAP company. This is something that doesn't</p>
<p style="text-align: right;">Page 127</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: Thank you, your Honor.</p> <p>3 Q. Do you know, Miss Bryant, how it was that</p> <p>4 Ford Kinder was credited with 50 percent of the</p> <p>5 writer's royalties on the music cue that you said you</p> <p>6 composed?</p> <p>7 A. It appears to be through a cue sheet because</p> <p>8 it is not a registration number.</p> <p>9 MR. TANNENBAUM: Objection.</p> <p>10 THE WITNESS: They have registration numbers</p> <p>11 on this, Mr. Tannenbaum.</p> <p>12 MR. TANNENBAUM: Appears to be through a cue</p> <p>13 sheet.</p> <p>14 MR. MONAGHAN: This is cross. If you want</p> <p>15 to cross-examine her, I'm sure you will get an</p> <p>16 opportunity.</p> <p>17 THE COURT: I'm going to allow the witness.</p> <p>18 On the other hand, my recollection is that the</p> <p>19 Kinder part of this had been settled, isn't it?</p> <p>20 MS. PHARES: Correct. Correct.</p> <p>21 Your Honor, I want to make clear, I'm just</p> <p>22 not popping up every time Mr. Bacal -- I mean, Mr.</p> <p>23 Bacal's counsel does. But I don't want that</p> <p>24 silence to be read as any suggestion that Sunbow</p> <p>25 believes that this line of questioning is -- has</p>	<p style="text-align: right;">Page 129</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 make sense here about the way it was registered. But I</p> <p>3 don't register these. The publisher's administrator</p> <p>4 registers them.</p> <p>5 Q. Do you know -- can you attribute any</p> <p>6 significance to the date, October 26th '94?</p> <p>7 What does that have to do with anything you</p> <p>8 did with this song?</p> <p>9 A. I really don't understand. It's a melody</p> <p>10 that was registered ten years before. Why it had to be</p> <p>11 re-registered, but --</p> <p>12 MR. TANNENBAUM: Objection. There is no</p> <p>13 evidence it was re-registered.</p> <p>14 THE COURT: Was it registered?</p> <p>15 THE WITNESS: It was registered again.</p> <p>16 MR. TANNENBAUM: It wasn't registered again.</p> <p>17 There is nothing on this page. That's not true.</p> <p>18 MR. MONAGHAN: This is argument.</p> <p>19 THE COURT: No, no, we're now working hard</p> <p>20 on Transformers.</p> <p>21 MR. MONAGHAN: We are.</p> <p>22 THE COURT: The witness has testified that</p> <p>23 she originated this sometime before this --</p> <p>24 Did it ever appear before in this catalog?</p> <p>25 THE WITNESS: Absolutely.</p>

<p style="text-align: right;">Page 130</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: Again, this catalog was only</p> <p>3 produced in 2000.</p> <p>4 THE COURT: No, but was there a prior</p> <p>5 catalog in which it was in?</p> <p>6 MR. MONAGHAN: Well, the witness is</p> <p>7 indicating yes.</p> <p>8 THE WITNESS: Yes.</p> <p>9 THE COURT: How is it listed there?</p> <p>10 You said you used to get them fairly</p> <p>11 regularly when you asked for them.</p> <p>12 THE WITNESS: No, I only got them once</p> <p>13 before.</p> <p>14 MR. MONAGHAN: No, those are the statements</p> <p>15 she got.</p> <p>16 THE WITNESS: It is registered many</p> <p>17 different ways in different percentages. It is</p> <p>18 the same song.</p> <p>19 MS. SAFFER: Your Honor, I object to the</p> <p>20 term "registered". The piece of paper says</p> <p>21 "entered". I would appreciate it if she would use</p> <p>22 the word that is listed on the actual piece of</p> <p>23 paper. Her counsel can ask her if she knows what</p> <p>24 "entered" means. But let's say it like it is on</p> <p>25 the document.</p>	<p style="text-align: right;">Page 132</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Q. Okay. How do you know of this term -- let</p> <p>3 me back up a little bit.</p> <p>4 In your understanding, because I'm sure Miss</p> <p>5 Saffer will correct me if I'm wrong, I just have a</p> <p>6 feeling, how are songs registered with BMI? How do</p> <p>7 they get any of this information that eventually finds</p> <p>8 its way into these catalogs?</p> <p>9 A. They are registered by someone authorized to</p> <p>10 put in a registration form or cue sheet. I put in</p> <p>11 registrations for my work and I've been authorized in</p> <p>12 certain circumstances, but not solely as the writer.</p> <p>13 Q. What does a registration form look like?</p> <p>14 What is the name of the form?</p> <p>15 A. BMI clearance form.</p> <p>16 Q. Have you seen them in the case?</p> <p>17 A. I think we had some around. I, you know --</p> <p>18 Q. Just so we are on that subject matter --</p> <p>19 A. -- I can identify it by sight.</p> <p>20 Q. -- let me show you now a document.</p> <p>21 MR. MONAGHAN: I'm going to ask the reporter</p> <p>22 to mark this as Exhibit 3.</p> <p>23 (Plaintiff's Exhibit No. 3, a clearance</p> <p>24 form, marked for identification)</p> <p>25 THE COURT: Clearance form marked as</p>
<p style="text-align: right;">Page 131</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: Your Honor, I don't know -- I</p> <p>3 tried a fair number of cases, I've never tried one</p> <p>4 where people jump up and down in the middle of</p> <p>5 your exam like this. They are free to. But I</p> <p>6 will say this, this is an exhibit in evidence. My</p> <p>7 understanding of the evidence rules are the</p> <p>8 witness can read from any exhibit that is in</p> <p>9 evidence.</p> <p>10 My question to her is if she understands why</p> <p>11 it is this way. That's all I'm asking.</p> <p>12 THE COURT: Apparently she doesn't.</p> <p>13 MR. MONAGHAN: That's right, she doesn't.</p> <p>14 THE COURT: All right, let's go on to</p> <p>15 something. Let's hold anything that we possibly</p> <p>16 can for cross, all right?</p> <p>17 Go ahead.</p> <p>18 Q. Okay. Are you finished discussing Autobots</p> <p>19 Go Into Battle?</p> <p>20 A. Yes. But I know that entered is a date and</p> <p>21 song number is not shown here. There is a BMI work</p> <p>22 number. I'm giving this to you. And there's no</p> <p>23 clearance number, which means I believe comparing it to</p> <p>24 everything else that it wasn't done through a clearance</p> <p>25 form.</p>	<p style="text-align: right;">Page 133</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Plaintiff's Exhibit 3.</p> <p>3 Any objection to it going into evidence?</p> <p>4 MR. TANNENBAUM: None, whatsoever.</p> <p>5 THE COURT: Objections?</p> <p>6 MS. PHARES: No objections, your Honor,</p> <p>7 except to note that the date on it is October,</p> <p>8 '85.</p> <p>9 THE COURT: In evidence.</p> <p>10 (Plaintiff's Exhibit No. 3, marked and</p> <p>11 received in evidence)</p> <p>12 MR. MONAGHAN: May I approach the witness</p> <p>13 because I don't have my own copy now?</p> <p>14 THE COURT: Yes.</p> <p>15 Q. Miss Bryant, what is this form?</p> <p>16 A. It is the original Transformers T.V. --</p> <p>17 Transformers registration for the T.V. show,</p> <p>18 apparently.</p> <p>19 Q. Okay. And what is the title of the work</p> <p>20 being indicated?</p> <p>21 A. Transformers T.V. show.</p> <p>22 Q. No, no, the title.</p> <p>23 A. Oh, Transformers Main Theme.</p> <p>24 Q. Is that the theme that you said you</p> <p>25 composed?</p>

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A. Yes.

Q. Is that the one we just heard through your phone?

A. Yes.

Q. That's the main part of the song?

A. Yes.

Q. Okay. You used the word, "bridge"; what does that mean "bridge"?

A. The middle part.

Q. Does the word, "refrain", have any application here?

A. "Refrain" is used all over the place.

Q. Okay.

A. It is used in many ways.

Q. And does this show Ford Kinder and yourself as co-writers?

A. Yes.

Q. And what was Mr. Kinder's contribution to the Transformers Main Theme?

A. Well, he didn't write it. He didn't write anything. But he did come up with a line that Joe liked, I think, Robots In Disguise, and that was one line of lyric we were 50/50 partners.

Q. Did you ever see this -- did you see this at

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CAROL ANNE BRYANT,
the Plaintiff, previously duly sworn
by the Court, resumed the stand
and testified further as follows:MR. MONAGHAN: If I could ask the court
reporter to read the last question, it was your
Honor's question to the witness, back.COURT REPORTER: "The Court: But you are
not saying there was anything wrong with that
form. You and Mr. Kinder, you said, were 50/50
splits.

"The Witness: We were and -- initially.

"The Court: All right.

"The Witness: Then it changed when Mr.
Dobishinsky started filing things."

DIRECT EXAMINATION

BY MR. MONAGHAN: (Continued)

Q. You were referring to Plaintiff's Exhibit
No. 3 in evidence. The Judge was asking you about the
form.

A. Yes.

Q. And then there was a discussion about the
50/50 split with Mr. Kinder.

A. Yes.

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the time this was generated?

A. No.

Q. Who was the party submitting this presumably
to BMI?

A. Lisa Goyette.

Q. Who was she?

A. She worked for Sunbow.

Q. And is this the type of form that is
submitted and under what circumstances?A. That's submitted by the publisher, someone
who had the authorization to submit it.THE COURT: But you are not saying there was
anything wrong with that form. You and
Mr. Kinder, you said, were 50/50 splits.

THE WITNESS: We were and -- initially.

THE COURT: All right.

THE WITNESS: Then it changed when Mr.
Dobishinsky started filing things.THE COURT: All right, on that note we will
take a short break.

(Recess: 3:15 p.m.)

(Resumed: 3:30 p.m.)

(Resumed on the record, in open court -
counsel and parties present as previously noted)

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Q. What does that 50/50 split arrangement with
Mr. Kinder have to do with this form?A. Ford Kinder and I split our income, but we
didn't split our credits that way.Q. Okay, explain to the Court, so we are clear,
what you mean by that when you say you split the
income -- you are talking about Kinder-Bryant?

A. Yes.

Q. What about writer credits as reflected in
Exhibit 3?A. Well, that should have never been listed
that way. It was initially filed by Sunbow, Kinder &
Bryant. And that makes sense that they did it. I
don't think they did anything on purpose, but that was
the way it was filed. But, of course, it was picked up
on lots of cue sheets over time. Like even this title,
I don't know who has custody of all of that. And these
are instrumental cues.

Q. Wait, wait.

A. Music.

Q. Miss Bryant, we'll go over that. I'm trying
to stick with that form.

A. Oh, that form.

Q. When did you authorize, if you authorized,

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someone to put in Kinder for 50 percent on the
Transformers Main Theme?

A. I didn't. I didn't put in that form.

Q. When did you first see this form?

A. The last couple of years ago.

MS. PHARES: Your Honor, my understanding was that this had been offered as an example of a form. But I now hear Mr. Monaghan asking about or questioning the registration. This is a form in 1985 which is well before your Honor's ruling on the statute of limitations. So for Sunbow, in any event, I am objecting that this is irrelevant to the issues before you.

THE COURT: Also the witness testified that she thinks Sunbow put it in. I'm not giving it any weight.

MR. TANNENBAUM: I have the same objection. This is a case on re-registration. This is not the original registration.

MR. MONAGHAN: Well, for the record, your Honor, this is in evidence and it bears the name Sunbow Productions as the party submitting.

THE COURT: All right.

MR. MONAGHAN: So I don't think it is just

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A. Same composition.

Q. The next one is a little different. Prepare For Battle.

THE COURT: Okay, thanks.

Q. This is -- I guess we've got the middle of it and now --

THE COURT: Okay.

Q. What is your understanding about the accuracy of the information reflected under Autobots Prepare For Battle in terms of participation, writer participation?

MR. TANNENBAUM: Prepare For Battle.

MR. MONAGHAN: Prepare For Battle.

A. Well, I wrote the music. It is a hundred percent music cue.

Q. Are there any lyrics?

A. No, there are no lyrics in that background score.

Q. So what percentage should that reflect?

A. 100 percent.

Q. In your name?

A. Yes.

Q. Do you have any idea how this registered this way?

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her opinion. It is in evidence.

Q. And you identified this person Lisa?

A. Yes. She worked at Sunbow.

Q. How do you know that?

A. I met her at some point in time.

Q. Did Lisa show you this form at some point before it was submitted?

A. No. They did the submissions.

Q. Now, let's get back to the catalog. Go back to the Transformers. Hopefully, maybe we can get through the catalog on Transformers today.

THE COURT: All right.

Q. If I can turn to the next song, there is another song -- I say song, another entry, Autobot Go Into Battle.

That is the one we just looked at?

A. That is the same thing.

Q. Okay. Any idea why it is in there twice? Because the work number is different, is it not?

A. I don't understand that, no.

Q. You don't understand why it is in there twice?

A. No.

Q. It's talking about the same composition?

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Do you see?

A. If you ask me to guess that I would say that came off that original incorrect registration and then traveled through Marvel and all the other different companies that make these animations. That is my guess.

MR. TANNENBAUM: I object. The witness has no knowledge, your Honor.

THE COURT: Sustained.

MR. TANNENBAUM: I also object on relevance on this, your Honor. If I can have a standing objection to that, I won't stand again.

THE COURT: I gave you that once. You still have it.

Go ahead.

Q. Okay, let's go to Page 6.

A. Yes.

Q. Referencing the third work which also bears a date entry 10/26/94. Again, do you have any idea of the significance of that date?

A. No, I just see it on this form.

Q. Okay. Now, the title of the composition here is Battle A; what does that have to do with the Transformers, if anything?

<p style="text-align: right;">Page 142</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 A. It's a cue.</p> <p>3 Q. And a cue again is music only?</p> <p>4 A. Yes. It's a cue.</p> <p>5 Q. Okay. And the participation shown, writer</p> <p>6 participations?</p> <p>7 A. Dannon, Ford, Wildstar, Starwild.</p> <p>8 Q. What should it be, in your estimation?</p> <p>9 A. It should be Anne and Starwild.</p> <p>10 Q. What percentage writer royalties?</p> <p>11 A. 100 percent.</p> <p>12 Q. Do you know how this came about that you</p> <p>13 only got 50 percent?</p> <p>14 A. I think it is key to that very first form</p> <p>15 you showed.</p> <p>16 MS. PHARES: Objection, your Honor. Is the</p> <p>17 witness referring to Plaintiff's Exhibit 3 which</p> <p>18 relates to something called Transformers Main</p> <p>19 Theme --</p> <p>20 THE WITNESS: Yes.</p> <p>21 MS. PHARES: -- and not to Battle A, which</p> <p>22 is the entry we're now referring to?</p> <p>23 THE COURT: I think we are talking about</p> <p>24 Battle A, are we not?</p> <p>25 MR. TANNENBAUM: Yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Transformers?</p> <p>3 THE WITNESS: Oh, yeah.</p> <p>4 THE COURT: All right.</p> <p>5 BY MR. MONAGHAN:</p> <p>6 Q. Have you ever heard any music which is</p> <p>7 identified as Battle A? Is there -- I'm asking a</p> <p>8 question out of the blue here myself. It says, Battle</p> <p>9 A. And the Judge asked a perfectly reasonable</p> <p>10 question.</p> <p>11 How do you know that's Transformers? Do you</p> <p>12 have any degree of familiarity with the Transformers</p> <p>13 products?</p> <p>14 A. Well, yeah. I never saw them on T.V. There</p> <p>15 was a T.V. show. I don't watch T.V. But because of</p> <p>16 all that has been going on for the last four years I've</p> <p>17 seen some of the videocassettes. And it's full of the</p> <p>18 Transformers Theme. They play it throughout the entire</p> <p>19 show.</p> <p>20 Q. How about Battle A?</p> <p>21 A. They never announced the name of a video of</p> <p>22 a background cue on -- in the middle of a show. Those</p> <p>23 are many of the cues that go for the Transformers show.</p> <p>24 I believe I saw them all over the cue sheets that Miss</p> <p>25 Saffer provided for us. Battle AA was on the</p>
<p style="text-align: right;">Page 143</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 MR. MONAGHAN: The witness's testimony --</p> <p>3 THE COURT: Oh, I see.</p> <p>4 MR. MONAGHAN: The witness's testimony is</p> <p>5 that's how it got -- that's the same music.</p> <p>6 Q. Correct?</p> <p>7 A. Right.</p> <p>8 BY THE COURT:</p> <p>9 THE COURT: How do we know that?</p> <p>10 MS. PHARES: Yes. Objection to foundation.</p> <p>11 THE COURT: How do you know it is the same</p> <p>12 music?</p> <p>13 MR. MONAGHAN: Miss Bryant?</p> <p>14 THE WITNESS: It wouldn't be in my catalog.</p> <p>15 These cues wouldn't be continuing in my catalog</p> <p>16 for the Transformers if it wasn't the same melody.</p> <p>17 THE COURT: Is there some way you can tell</p> <p>18 by looking at that by the numbers?</p> <p>19 THE WITNESS: I can tell by looking at it,</p> <p>20 hearing it, I do that.</p> <p>21 THE COURT: Could it be that you wrote</p> <p>22 something called Battle A?</p> <p>23 THE WITNESS: I never wrote a song called</p> <p>24 Battle A. That is a cue.</p> <p>25 THE COURT: So it is your position that's</p>	<p style="text-align: right;">Page 145</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>2 Transformers show.</p> <p>3 MR. MONAGHAN: I'll ask counsel, is there</p> <p>4 any dispute that this is referring to the</p> <p>5 Transformers?</p> <p>6 MR. TANNENBAUM: No.</p> <p>7 MR. MONAGHAN: No dispute.</p> <p>8 MR. TANNENBAUM: Not as to the -- it's -- it</p> <p>9 appears in the Transformers catalog. Whether it</p> <p>10 is the same song as another listed Transformers</p> <p>11 song, there is much debate about that.</p> <p>12 THE WITNESS: There is.</p> <p>13 MS. PHARES: Sunbow joins that objection.</p> <p>14 But, in addition, the objection that I was lodging</p> <p>15 originally is that I see no reference to Battle A</p> <p>16 as it appears on Page 6 of Plaintiff's Exhibit 2,</p> <p>17 and Plaintiff's Exhibit 3 which refers to</p> <p>18 something referred to as the Transformers Main</p> <p>19 Theme.</p> <p>20 MR. MONAGHAN: Well, this is</p> <p>21 cross-examination material. The witness has</p> <p>22 testified -- excuse me one second. The witness</p> <p>23 has testified this is -- it wouldn't be in her</p> <p>24 catalog if it weren't Transformers.</p> <p>25 THE COURT: I believe it is for</p>

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2 cross-examination. Let's go.

3 Q. Okay. Then there is another entry for

4 Battle A; is that the same?

5 A. On 8?

6 Q. Page 6.

7 There are three Battle As on?

8 A. Yeah, the same.

9 Q. In fact, there are a slew of Battle As?

10 A. Yes.

11 Q. They all seem to bear, you agree -- and it

12 is in evidence -- they bear different work numbers?

13 A. Yes.

14 Q. Okay. Do you have any explanation for that?

15 A. No, I really don't understand how that

16 catalog --

17 Q. All appear on that October 26th '94 date?

18 A. Yes.

19 Q. Except -- I beg your pardon -- I beg your

20 pardon. There is an entry on Page 7, the second entry

21 has a date of 11/10/94.

22 A. Slightly different.

23 Q. Any significance to that date in your mind?

24 A. Just a couple of weeks later. None for me,

25 personally.

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2 Q. Okay. And what would your testimony be with

3 respect to the compositions reflected on Page 7? In

4 what respect do they relate to the Transformers Theme

5 that you composed?

6 A. All Transformers cues.

7 Q. Okay.

8 A. And they are instrumental and they are music

9 only.

10 Q. And do you have any explanation for the

11 Court why Mr. Kinder is shown as a 50 percent writer?

12 A. No.

13 Q. What did you have to do with that occurring

14 in terms of the registration?

15 A. I didn't file this registration.

16 Q. Okay. Now, if we can go to Page 8.

17 A. You know, these are all on the Transformers

18 cue sheets that Mrs. Saffer gave us, Battle A, Battle

19 B, Battle D. It says Transformers Television Show.

20 Battle A, you know, it is all the theme credited on

21 that cue sheet.

22 MR. MONAGHAN: Let me show you since we are

23 on that subject matter.

24 (Pause in the Proceedings)

25 MR. MONAGHAN: We'll try and locate that,

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2 but right now I'll show you another on the

3 Transformers.

4 Are we up to 4?

5 (Plaintiff's Exhibit No. 4, a clearance

6 form, marked for identification)

7 MR. MONAGHAN: We're going to offer this in

8 evidence; is there any objection?

9 MS. PHARES: I object on the statute of

10 limitations grounds. 1988.

11 MR. TANNENBAUM: Same objection.

12 MR. MONAGHAN: That is not an evidentiary

13 objection.

14 MS. PHARES: It is an exclusion.

15 MR. MONAGHAN: It is dealing with the

16 Transformers Theme. And it was produced.

17 THE COURT: I'm going to allow it for

18 whatever purpose I'll use it for. This is again a

19 clearance form.

20 MR. MONAGHAN: Yes, it is, your Honor.

21 (Plaintiff's Exhibit No. 4, marked and

22 received in evidence)

23 Q. Okay, Miss Bryant, you see the document that

24 the reporter has marked as Exhibit 4?

25 A. Yes.

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2 Q. When did you first see this document?

3 A. Whenever you subpoenaed it from BMI. A

4 couple of years ago, maybe.

5 Q. And do you know what it refers to?

6 It's a BMI clearance form, is it not?

7 A. Transformers Movie Theme.

8 Q. Okay. Had you seen this in or about the

9 time that it is dated, which appears to be 1988?

10 A. No, I never saw it until you subpoenaed it

11 from BMI.

12 Q. And it is in evidence, so you are entitled

13 to read from it.

14 Could you read, please, what the name of the

15 title is that is being registered through this

16 clearance form?

17 A. Transformers Rock & Roll Theme.

18 Q. Are you familiar with the Transformers Rock

19 & Roll Theme?

20 A. Yes.

21 Q. And what music of yours is utilized in that

22 theme?

23 A. It's the payoff of the song. New lyrics.

24 Music was written to build up to the Transformers

25 Theme, which is the famous piece. A verse. Kind of

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 2 think of it as a verse and then boom here's the hook.
 3 Q. What we just heard on the phone earlier?
 4 A. Yes. It paid off with that melody.
 5 Q. Now, there is a mention of an outfit called
 6 Holy Moly Music on Pico Boulevard. We spent a lot of
 7 time on Pico Boulevard recently in Santa Monica,
 8 California.
 9 Are you familiar with that company?
 10 A. No, I don't know that at all.
 11 Q. Did you submit this form?
 12 A. No.
 13 Q. And you have not seen it before this
 14 litigation?
 15 A. No, I have not.
 16 Q. Can you tell the Court, please, what the
 17 breakdown of writers -- and identify the writers shown
 18 on the form, the names and the percentages attributed
 19 to those writers?
 20 A. I'll try.
 21 Douglas Aldrich, 25 percent.
 22 Q. A-L-D-R-I-C-H?
 23 A. Yes.
 24 Q. Do you know Douglas Aldrich?
 25 A. No.

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 2 Q. The next name?
 3 A. Norman Murray Swan.
 4 Q. Do you know him?
 5 A. No, I don't.
 6 25 percent.
 7 Q. Right.
 8 A. Joe Bacal, 10 percent.
 9 Anne Bryant, 20 percent.
 10 Clifford Kinder -- Ford Kinder, 20 percent.
 11 Q. Do you see the box checked Motion Picture or
 12 T.V. Film up on top?
 13 A. Yes. It does -- it says also in somebody's
 14 hand "From Film Transformers".
 15 Q. Is it your understanding this was submitted
 16 to BMI?
 17 A. Yes, it was.
 18 Q. Okay. And how is it that Douglas -- can you
 19 explain to the Court why a person named Douglas Aldrich
 20 is given 25 percent of music that you say you composed?
 21 A. You know, they did write music that led up
 22 to the theme. The theme was the famous piece the
 23 Transformers kids grew up on. But they wrote a verse,
 24 like a Noel Coward song has a verse that pays off in
 25 the famous song, you know. There was verse music that

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 2 led up to it. I believe there might have been a
 3 performance even. So you can argue for what their
 4 percentage should be. Should it be a half? Should it
 5 be a quarter? I don't know. But I think that was
 6 their justification for getting this half.
 7 Q. Did you authorize these percentages?
 8 A. No. No, I didn't.
 9 Q. Did anybody discuss this with you?
 10 A. No.
 11 Q. Do you know of any relationship between Mr.
 12 Bacal and any of these other persons?
 13 A. All I know is that Joe produced the movie.
 14 Q. Joe Bacal was the producer of the movie?
 15 The Transformers movie?
 16 A. He's shown on the credits as the producer.
 17 Q. Do you know what Holy Moly has to do with
 18 Mr. Bacal, if anything? Or Sunbow?
 19 A. No, I don't know anything about Holy Moly.
 20 Q. And I saw the name, "Lion"; do you see the
 21 name "Lion"?
 22 A. Lion is a rock group.
 23 Q. Are you familiar with that group?
 24 A. No. I heard them sing on the Transformers.
 25 They are good. And Scotty Brothers is a record label.

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 2 We never got any royalties, by the way, for records.
 3 Q. When did you authorize your theme music to
 4 be used as part of the Transformers Rock & Roll Theme?
 5 A. I didn't.
 6 Q. Okay.
 7 A. There's something you missed. Starwild only
 8 got 50 percent of the publishing. These people
 9 actually got 50 percent of the publishing.
 10 Q. "These people" being whom?
 11 A. Aldrich and Swan.
 12 Q. And do you know how that came about?
 13 A. They must have negotiated for it. I don't
 14 know how.
 15 Q. All right.
 16 A. I could never get publishing with them.
 17 Q. You could never get publishing from Griffin
 18 Bacal; is that what you are saying?
 19 A. Right. And Sunbow. They kept the
 20 publishing.
 21 Q. All right. Now, going back to the catalog,
 22 we covered Battle A. Now we are on Page 8. And I
 23 think actually there is a carryover. Yes. Page 7.
 24 If I can direct your attention to the bottom
 25 of Page 7 which refers to Battle B.

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A. Uh-huh.

Q. Again, October 26th, 1994, date shown, writers shown as yourself and Mr. Kinder, 50/50.

The testimony would be the same about that entry as previously?

A. Yes.

Q. You wrote 100 percent of the music?

A. Yes.

Q. It is instrumental?

A. Yes.

Q. Battle D, the next one.

A. Can I just say same?

Q. You can. I believe that is acceptable.

A. Same.

Q. Same on Battle D.

And there are two entries for Battle D?

A. Yes.

Q. And then Battle E?

A. That's the same.

Q. All Transformers?

A. All Transformers.

Now we are on to Beat This.

Q. That is not a Transformers?

A. No. A JEM song.

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Q. Now, if I can direct your attention to Page 13?

A. Thirteen.

Q. Do you see that first full entry title C-H-A-E-D?

A. It is misspelled. It should be Chase.

Q. What song is that referring to?

A. Transformers.

Q. Same deal?

A. Yes.

Q. Chase B?

A. D and B, same thing. C.

Q. Again, you have no idea how this came about; is that right?

A. No. I told you --

MR. TANNENBAUM: Objection to the form.

A. -- I think it came off the original registration.

THE COURT: Sustained. Objection is to form, counselor.

MR. MONAGHAN: Okay.

THE COURT: Go ahead.

Q. Chase C, Chase D would be the same?

A. Yes.

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MR. TANNENBAUM: I object. I'm not sure I know what the question is, I'm sorry.

MR. MONAGHAN: Her testimony would be it is incorrect showing Mr. Kinder 50 percent, which she said ad nauseam.

MR. TANNENBAUM: Incorrect --

MR. MONAGHAN: My question is: Is it incorrect in showing Mr. Kinder at 50 percent when it was originally registered, and she said yes.

Q. Is that correct?

A. That's right.

MS. PHARES: And relevance as well, your Honor.

MR. TANNENBAUM: We have a standing objection?

THE COURT: Yes.

Q. Well, on Page 14 we are dealing with entries in 1994, according to the date on BMI records.

MR. TANNENBAUM: No, no, no. Then I strenuously object to anything -- establish anything that happened before the change. You put in a piece of paper that showed 50/50, then you show 1994 that shows 50/50. I don't know if you know when something changed.

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MR. MONAGHAN: This may be a new way of trying a case.

MR. TANNENBAUM: I'm objecting to you --

THE COURT: Let's continue.

Q. There is an entry on Page 14, Miss Bryant, Chase D? And a work number, BMI work number ending in 76; do you see that?

A. Yes.

Q. What is your testimony about the splits, the writer splits?

A. The split is incorrect. It is an instrumental cue. Should be 100 percent for music.

Q. Okay. And do you have any knowledge of the date, significance of the date October 26th, 1994?

A. No, I don't.

Q. Do you have any knowledge of the significance of the work number?

A. No, I don't.

Q. Okay. Are you -- up until 2000, did you gain any degree -- let me ask it a different way so they don't jump on me for that.

What degree of familiarity did you have with respect to BMI's nomenclature; in other words, the names and the designations they used, words like

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
2 "clearance forms", "entered", "work numbers", that kind
3 of nomenclature?

4 A. I knew about all that except I had a
5 different understanding of cue sheets than what they
6 had been saying here. My understanding --

7 Do you want to know what it is?

8 Q. You might as well.

9 A. Okay, my understanding of cue sheets, they
10 were used to time and to log music composed for
11 television. None of this music was composed for
12 television, it was composed for another purpose years
13 ago, and then it kept getting lifted from different --
14 became a jingle, it became a Sunbow theme, and then it
15 became a later T.V. Series. They used the same piece
16 of music that was written many years ago. So I didn't
17 understand why that would ever be on a cue sheet to
18 change the percentage of the registration. I can
19 understand that you might want to list the song that is
20 on the cue sheet so that it gets paid, but not list it
21 the different percentages to pay the writers than had
22 been there previously.

23 MS. SAFFER: Your Honor, there has not been
24 a single bit of testimony to the effect that any
25 of the percentages were ever changed. In fact,

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
2 the Plaintiff's own exhibits, which are very old,
3 and we object to on those grounds. But,
4 nevertheless, they have the identical percentages
5 and shares that are listed on the document that
6 the Plaintiff is now testifying to. There is not
7 a wit of evidence that one share changed between
8 the time they were originally registered and it
9 appears on that list.

10 MR. MONAGHAN: If I can address this, okay,
11 I don't know if Miss Saffer was listening as
12 closely as perhaps you might have, because the
13 witness's testimony was that she didn't see this
14 form. It was submitted by somebody else. The
15 witness's testimony was that she wasn't able to
16 get her catalog in a timely fashion. And the
17 witness is saying that these entries,
18 notwithstanding that form that might have been
19 submitted by Sunbow Productions, is incorrect.
20 That's her testimony.

21 It is fair game for cross-examination. I'm
22 not trying to deprive them, but these repeated
23 interruptions, they are bolloxing up my direct,
24 Judge, I can't get through it.

25 THE COURT: I agree.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
2 All right, let's continue.

3 BY MR. MONAGHAN:

4 Q. Okay, still working on the Transformers.

5 Directing your attention, Miss Bryant, to
6 Page 16. If you know -- and only every question I ask
7 you, Anne, is asking for your personal knowledge.

8 If you know, that second entry there
9 continuing, are you able to identify the music at
10 issue?

11 A. It is a Transformers music cue.
12 Instrumental.

13 MS. PHARES: Your Honor, one question I do
14 have here is -- and I should have asked this when
15 it was offered -- do we know whose handwriting is
16 on this --

17 (Counsel conferring off the record)

18 MR. TANNENBAUM: We are working off a
19 different copy. Go ahead.

20 MR. MONAGHAN: Okay.

21 Q. Next -- okay, now, we don't have one that
22 mentions Transformers. Page 20.

23 See the third entry there, Miss Bryant?

24 A. Fast Action Transformer Theme. Fast Action.

25 Q. Again, bears a different BMI work number

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
2 than previously identified compositions?

3 A. Yes.

4 Q. Does it bear the date October 26th '94?

5 A. Yes.

6 Q. What would your testimony be about the
7 writer's splits?

8 A. They are -- they are the same as the other
9 cues. They are instrumentals and they are 100 percent
10 music, and they are incorrect.

11 Q. Okay.

12 MR. MONAGHAN: Your Honor, I have another
13 document that will lead me to the place faster.
14 If I could just have a second?

15 Q. I'd like to direct your attention to Page
16 55 --

17 A. Fifty-five?

18 Q. Yes, ma'am.

19 The third entry on Page 55. Three Battle A.
20 What composition are we talking about?

21 A. This is all Transformers.

22 Q. What would your testimony be about the
23 writer split?

24 A. The same as the other named battles. It's
25 an instrumental cue. 100 percent.

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Q. Now, if I can -- okay, let's go to Page 69.

A. I found one that is right. I found one that is right on Page 69.

Q. Which one would that be?

A. Two in a row. Transformer Bryant cues music.

THE COURT: Did you say 69?

THE WITNESS: Yes, 69.

MR. MONAGHAN: Yes, I did, Judge.

Q. The third entry there, that's correct?

A. And the fourth too.

Q. Can you explain why entries that apparently according to the exhibit one made in '97 is correct as well as one made in '94 where these others are incorrect? Do you have any explanation for that?

A. You know, I really don't.

MS. SAFFER: Excuse me, I'm sorry, but I object because in asking the question an assumption is being made. There has been no explanation as to what the word "entered" means.

THE COURT: Well, you'll get your chance --

MS. SAFFER: Okay.

THE COURT: -- on cross-examination.

Go ahead.

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Q. Now, how about the bottom entry there, Transformers Theme B?

A. Oh, back to that, it's like the other Chase -- it should be 100 percent for the music instrumental cue.

Q. Okay. Page 70, if I can direct your attention, the testimony about the top entry there which I believe is titled on the previous page, it looks like the title is just Transformers entered 12/10/97.

What is your testimony about the writer splits reflected there?

A. It's 50/50.

Q. What should it be?

A. It should be 100 percent in my name.

Q. Again, why is that?

A. Because I wrote it.

Q. No lyrics involved here?

A. There's no lyrics involved in this.

Q. Next entry Transformers Bumper?

A. A bumper is a musical sting. It closes out a scene. Bum da dum, and then you go to a commercial. And it is used quite a bit.

That is a commercial, it should be

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100 percent in my name.

Q. And then the next one, Transformers Instrumental Theme Two. It says, "a/k/a Transformers closing theme instrumental or with lyrics?"

A. Well, it is an instrumental.

Q. That's what it says.

A. It is a closing theme for the television show and it was actually cleared. There is a clearance number here.

Q. Okay. Now, we have not seen -- I don't think we've seen a clearance number.

What is your understanding of the significance of the fact that BMI is showing a clearance number in and a song number here, if you know?

MR. MONAGHAN: This witness's understanding.

MS. SAFFER: Thank you.

A. I don't understand what the song number is all about, but the clearance number -- we just saw clearance sheets that, you know, that you fill out and are sent back to you by BMI. So that would be the clearance number.

Q. What did Joe Bacal, that shows as 24.9 percent interest, have to do with the composition

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of the Transformers closing theme?

A. I don't know. He didn't write the music. He didn't write the music.

Q. Okay.

A. How does anybody write 24.9 percent for a piece of music anyway? That's weird.

Q. Did you -- what authorization was given to credit Mr. Bacal with 24.9 percent?

A. I never gave any authorization.

Q. Okay.

A. I'm not in a position to do that.

Q. Just please stick with my question.

And what is the -- now, we see the word "register" 4/28/97.

What is the significance in your mind of that date?

A. Seems to be a difference between register and enter.

Q. Right.

A. Getting it? Okay.

Q. Do you know what the date significance is?

A. I don't know. No, I don't.

Q. Was anything happening of which you are aware at that point in time? Dealing with your music

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
 2 the Transformers.
 3 A. I don't know. I don't watch television.
 4 Q. Okay. Now, let's go to the next entry which
 5 is Transformers Main Theme.
 6 Is that the same theme you've been talking
 7 about?
 8 A. Yes, that's the original theme.
 9 Q. Do you know how it was Kinder was credited
 10 with 50 percent of that?
 11 A. I don't know how that happened.
 12 Q. Okay.
 13 A. But it's on that -- that clearance form that
 14 you showed us.
 15 Q. Next page.
 16 A. This is the television theme.
 17 Q. This is the television theme?
 18 How do you know that?
 19 A. Because I don't have new jingles in here.
 20 The jingle theme had a nick-name Robots In Disguise
 21 which was a major line from the Transformers Robots In
 22 Disguise. So Mr. Dobishinsky listed Robots In Disguise
 23 for the jingles and the Transformers theme for the
 24 song, for the television song. Maybe so that they
 25 could tell them apart. I don't know.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
 2 Q. You mentioned him twice now. You mentioned
 3 him right at the break when the Judge asked you the
 4 question.
 5 A. Right.
 6 Q. Bill Dob -- D-O-B-I-S?
 7 A. -- H-I-N-S-K-I.
 8 Q. Who is he?
 9 A. He's a lawyer who is an administrator who
 10 worked in administration for publishing for maybe a
 11 number of people, but I know he worked for Bacal and
 12 son, both. They are a publishing arm. Wildstar and
 13 Starwild.
 14 Q. What was his function as the administrator,
 15 as you understood it?
 16 A. Well, he filed and cleared compositions with
 17 BMI and ASCAP for the Griffin-Bacal and Sunbow writers
 18 and for, you know, the publisher. He worked with the
 19 publisher.
 20 Q. Sunbow?
 21 A. Yeah.
 22 Q. Or Wildstar or Starwild?
 23 A. Right.
 24 Q. Did you ever hire him as your lawyer?
 25 A. No. No, he was a lawyer, but we never hired

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN
 2 him as a lawyer.
 3 MR. TANNENBAUM: The witness said "we". I
 4 just want to know who --
 5 THE COURT: Or anyone else she knows.
 6 THE WITNESS: I thought he meant Kinder &
 7 Bryant. I believed he was saying you.
 8 Q. So he never acted as your attorney?
 9 A. No. He once --
 10 Q. That's just a yes or no.
 11 A. Okay. No.
 12 Q. I know it's tempting, okay.
 13 THE COURT: Let's go on.
 14 MR. MONAGHAN: Thank you, Judge.
 15 Q. I believe we are on Page 71.
 16 A. Oh, there it is.
 17 Q. Transformers Rock & Roll Theme. That's the
 18 same name we saw before in the clearance form, wasn't
 19 it? The one we could hardly make out?
 20 A. Yes.
 21 Q. And who are these people? You mentioned
 22 Douglas Aldrich. You don't know who he is, although
 23 you have an idea. Then you know who Mr. Bacal is.
 24 A. Of course.
 25 Q. Okay. Is this -- is this an instrumental or

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 2 does this have lyrics?
 3 A. Oh, it has lyrics.
 4 Q. Okay. Do you know what participation Mr.
 5 Bacal had in the lyrics for Transformers Rock & Roll?
 6 A. He wrote the lyrics for the original
 7 Transformers.
 8 Q. The Transformers that had lyrics?
 9 A. Yeah, the jingle.
 10 Q. And the phrase, Robots In Disguise, is that
 11 Mr. Bacal's?
 12 A. Ford says he wrote it. Said he changed it.
 13 I don't know -- I don't remember.
 14 Q. All right, again, I think you talked about
 15 this, I don't want to beat a dead horse here, but these
 16 people are the individuals, some of them anyway, who
 17 are listed on that clearance form we showed you
 18 earlier. I forget the exhibit number. Plaintiff's
 19 Exhibit 4.
 20 Do you know Enson Music Corporation? Does
 21 that name have any meaning to you?
 22 A. No, I don't know them.
 23 Q. And there's a name on the bottom that
 24 apparently doesn't participate in any U.S. sharing but
 25 it's BMG Dunbar Enson.

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2 What does that mean to you?

3 A. It's a Canadian company, isn't it?

4 Q. I'm asking you if you know.

5 A. I think it's Canadian or PROCA. Yeah.

6 Q. And then the next entry is Theme B,

7 Transformers Theme B; what is your testimony about the

8 splits on that?

9 A. It's an instrumental cue.

10 Q. And what should the splits be?

11 A. 100 percent should be for me and it should

12 be Starwild.

13 Q. And, again, your testimony is -- and correct

14 me if I'm wrong -- you had an agreement with Kinder

15 that you would split the income that came into

16 Kinder-Bryant, but you didn't have an agreement that

17 you would split these writer shares; is that correct?

18 A. No, it would get all screwed up if we did it

19 that way. And it did anyway.

20 Q. Transformers Theme Close.

21 A. Yes.

22 Q. How does Joe Bacal get credited with

23 24.9 percent?

24 A. I don't know.

25 Q. Did you authorize that?

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2 A. No.

3 Q. Did he ever discuss it with you?

4 A. No.

5 Q. Did anyone ever discuss it with you?

6 A. No.

7 Q. Instrumental?

8 A. Usually the closing theme is -- I believe

9 it's the instrumental closing theme. I saw it on the

10 cue sheet.

11 Q. How about this is a different date now,

12 August 25th, '94. Does that date have any significance

13 to you?

14 A. It's six years.

15 Q. Do you know what happened then that might

16 give rise to an entry in the records of BMI?

17 A. No. I don't know what would have created

18 that all of a sudden.

19 Q. Okay. Then we have Transformers Theme Close

20 entered 6/4/98, Joe Bacal 24.9 percent.

21 Same questions.

22 A. I didn't know who did that and why.

23 Q. And what should the split be?

24 A. It should be 100 percent.

25 MR. MONAGHAN: We're winding down, Judge, on

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2 the Transformers.

3 Q. Okay, Page 72, Transformers Theme Open.

4 Now, am I correct this is an example of

5 where Mr. Bacal is entitled to some participation as a

6 writer; is that right?

7 Didn't he write lyrics for this?

8 MS. PHARES: Objection, leading.

9 THE COURT: Sustained.

10 MR. TANNENBAUM: I liked the question.

11 A. What should I do?

12 MR. MONAGHAN: I'll withdraw it. Let me ask

13 it straight.

14 Q. What was Mr. Bacal's involvement in this

15 composition as it is listed here; if you know?

16 A. This is the same composition as Transformers

17 jingle Robots In Disguise. And the way we worked with

18 his companies was that we got 100 percent of the

19 writer's royalties. So it is the same song.

20 Q. But how -- you got 100 percent?

21 A. No matter what they wrote.

22 Q. No matter what even Mr. Bacal wrote?

23 A. That's true.

24 Q. Why do you say that? You are here under

25 oath. Why are you saying under oath that you got --

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2 what is your basis for saying you got 100 percent of

3 the writer's royalties even if Mr. Bacal participated

4 in some way?

5 A. Well, that was the deal that we made and

6 that's the deal I have with every advertising agency I

7 work with. They all give us 100 percent of the

8 writer's royalties. It is standard practice in the

9 jingle business. The writers keep the royalties

10 100 percent.

11 MR. TANNENBAUM: Objection on the grounds of

12 relevance. This is not a jingle. This is a song

13 that is used in a television series.

14 THE COURT: Overruled.

15 MR. TANNENBAUM: I also object on the

16 grounds of statute of frauds if there is some kind

17 of oral agreement.

18 THE COURT: Overruled.

19 Go ahead.

20 MS. PHARES: Same objection, your Honor.

21 THE COURT: Go ahead.

22 MS. PHARES: And also we are not referring

23 to jingles in this case nor to -- nor to

24 advertising agencies.

25 THE COURT: Well, we are referring to

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2 Transformers. Let's go.

3 BY MR. MONAGHAN:

4 Q. The next entry, Miss Bryant, do you know --

5 let me back up to the previous entry.

6 Do you know how the percentages -- is there

7 any basis in your mind for those particular percentages

8 8.3, 8.3 --

9 A. 8.3, 8.3, 83.4.

10 Q. That should add up to 100 percent.

11 Do you know how that was arrived at?

12 A. I can't imagine.

13 Q. Okay.

14 A. It is the same song. And who writes

15 8.3 percent of his song? What is that? A comma?

16 Q. How about the next one?

17 A. Same thing. 8.3, 8.3, 83.4.

18 THE COURT: Well, this may help us as we go

19 along this road.

20 Is there anything, Miss Bryant, that you

21 know about this form, these forms, that can help

22 you decipher about how the split was made? In any

23 of them? Any of them?

24 THE WITNESS: I can't imagine how the split

25 was made.

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2 THE COURT: All right, so let's stop going

3 one to another here, all right?

4 MR. MONAGHAN: I think we might be done.

5 THE COURT: Well, I should have said that

6 sooner then.

7 THE WITNESS: That was the important one,

8 because that's --

9 THE COURT: Okay, but I mean this is going

10 to go on for the other ones that are listed here.

11 MR. MONAGHAN: No, they are not nearly as

12 Transform --

13 THE COURT: No, I mean but to this

14 witness --

15 MR. MONAGHAN: Yes.

16 THE COURT: -- she doesn't know how this was

17 done --

18 MR. MONAGHAN: Right.

19 THE COURT: -- as to any of them that are in

20 this catalog.

21 MR. MONAGHAN: That is true. But she does

22 have to lay a foundation making a claim and

23 100 percent of it is hers and that's the way she's

24 doing it, she is taking each composition because

25 this is the basis for how --

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2 THE COURT: Okay, go ahead.

3 MR. MONAGHAN: Okay. Your Honor, I've

4 reached the end of my line on Transformers. I've

5 reached the end of the line on my energy. I

6 wonder if you would indulge us by breaking a

7 little bit earlier today.

8 THE COURT: I would like to talk to the

9 attorneys for a minute.

10 MS. PHARES: At this point, your Honor, I

11 would like to make a motion to strike all of this

12 testimony to the extent that it refers to initial

13 registrations, not re-registrations, as was pled

14 in Paragraph 10 of the complaint. And also in

15 your Honor's decisions both in December and in

16 January of last year and this year that all

17 registrations prior to 1994 were time-barred.

18 THE COURT: Yes, well -- let's talk to the

19 attorneys, I'll reserve on that.

20 MR. TANNENBAUM: I just want to join in the

21 objection, your Honor.

22 THE COURT: All right.

23 MR. MONAGHAN: I think we're done.

24 THE COURT: You can step down.

25 THE WITNESS: Okay, thank you.

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2 (Witness Excused)

3 (Counsel retired to Judge's Chambers of an

4 off the record discussion)

5 (Court Adjourned: 4:20 p.m.)

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7

8 C E R T I F I C A T I O N

9

10 I, Elizabeth A. Kent, Senior Court Reporter for

11 the State of New York, do hereby certify the foregoing

12 to be true and accurate, as taken by me on the 6th Day

13 of July, 2004, before the Hon. Andrew P. O'Rourke,

14 J.S.C.

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16 _____

17 Elizabeth A. Kent

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